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*Hugh and
Donna Keating*

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The First Amendment & Governmental Entities

also an issue that strikes much debate. Whose rights are more important? Should the government protect the free speech of the protesters or the privacy rights of the clinic's patrons? This question is answered by deciding if the statute is content neutral in time, place and manner regulation. If not, the statute must be narrowly-tailored. A statute cannot be overly broad or unconstitutionally vague, and cannot impose unconstitutional prior restraint on speech.

In an effort to protect doctors, staff and patrons of abortion clinics, Congress enacted the Freedom of Access to Clinic Entrances Act (F.A.C.E.) in 1994. F.A.C.E. provides in pertinent part that it is a criminal act to intentionally injure, intimidate or interfere with anyone who is or has been obtaining or providing reproductive health services. 18 U.S.C.A. § 248(a)(1). F.A.C.E. also states that it is a criminal act to intentionally damage or destroy the property of a facility that provides reproductive health services. *Id.* at § 248(a)(3).

In recent years, courts have taken further steps to protect the patrons and staff of abortion clinics by using buffer zones. In *Madsen v. Women's Health Center*, a health care clinic sought to broaden an injunction against anti-abortion protesters, because the access to the clinic was still obstructed by the protesters. 512 U.S. 753, 114 S. Ct. 2516, 129 L. Ed. 2d 593 (1994). The health care clinic further alleged that these protesters discouraged potential patients from entering the facility. *Id.* The Supreme Court announced a new test for cases involving an injunction prohibiting and/or limiting speech. The Court stated that a content-neutral injunction would be upheld if the provisions burdened no more speech than necessary to serve significant government interests. *Id.* First, the Supreme Court found that, even though the injunction only restricted the speech of anti-abortion protesters, the injunction was nonetheless content neutral. *Id.* The Court went on to find that (1) the 36-foot buffer zone around the clinic's entrances and (2) imposing limited noise restrictions did not violate the protesters' First Amendment rights. *Id.* The Court further held that (1) imposing a 36-foot buffer zone on private property, (2) banning observable images, (3) establishing a 300-foot no-approach zone on the prime-

ter of the clinic, and (4) establishing a 300-foot buffer zone around the residences of abortion clinic staff did burden more speech than necessary to serve governmental interests and was unconstitutional. *Id.*

The issue of abortion protesters and the First Amendment was again brought before the United States Supreme Court in 1997 in *Schenck v. Pro-Choice Network of Western New York*. In *Schenck*, health care providers sought an injunction prohibiting abortion protesters from engaging in illegal efforts to prevent patrons from entering the health care facility to obtain abortions and alternate family planning services. 519 U.S. 357, 117 S. Ct. 855, 137 L. Ed. 2d 1 (1997). The health care providers alleged that abortion protesters "marched, stood, knelt, sat or lay in clinic parking lot driveways and doorways, blocking or hindering cars from entering the lots, and patients and clinic employees from entering the clinics." *Id.* at 362. Some protesters went further and crowded, grabbed, pushed and spit at women entering the clinics. *Id.* at 363. The Court applied the *Madsen* test to this case. The Court held that governmental interests in ensuring public safety and order, promoting the free flow of traffic, protecting property rights, and protecting the freedom to seek pregnancy-related services were significant enough to justify an injunction providing unimpeded access to these clinics. *Id.* The Court further held that fixed buffer zones requiring protesters to remain 15 feet from the doorways, driveways, and driveway entrances did not violate the First Amendment, because they were necessary to ensure access. *Id.* However, the Court would not allow floating buffer zones, which required protesters to remain 15 feet from people and vehicles entering and leaving the clinics, because the floating buffer zones burdened more speech than was necessary to serve a governmental interest. *Id.*

In 2000, the Supreme Court of the United States published its opinion in *Hill v. Colorado*. In *Hill*, abortion protesters sought an injunction against the enforcement of a statute prohibiting any person from knowingly approaching within eight feet of another person near a health care facility without consent. 530 U.S. 703, 120 S. Ct. 2480, 147 L. Ed. 2d 597 (2000). The Court stated that the First Amendment

affords the right to persuade others to change their views. *Id.* at 716. However, this protection does not extend to speech "that is so intrusive that the unwilling audience cannot avoid it." *Id.* (citing *Frisby v. Schultz*, 487 U.S. 474, 487, 108 S. Ct. 2495, 101 L. Ed. 2d 420 (1988)). "The principal inquiry in determining content neutrality, in speech cases generally and in time, place or manner cases in particular, is whether the government has adopted a regulation of speech because of disagreement with the message it conveys." *Id.* at 719 (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791, 109 S. Ct. 2746, 105 L. Ed. 2d 661 (1989)). The Court ultimately held that (1) the statute was narrowly-tailored content-neutral time, place and manner regulation; (2) the statute was not overbroad; and (3) the statute did not impose unconstitutional prior restraint on speech. *Id.* In this decision the Court relied on the facts that this statute applied to all viewpoints, that one viewpoint was not favored over another, that it was narrowly-tailored and left open ample alternative means of communication, that the statute will do little to deter protected speech, and that the statute was not vague. *Id.* at 723-35.

While the United States Supreme Court has not issued opinions regarding the First Amendment rights of abortion protesters in several years, the issue is nevertheless always present. In April 2011, a federal judge refused a request for an injunction against Kansas anti-abortion activist Angel Dillard. Dr. Mila Means would have been the first doctor to perform abortions in Wichita, Kansas since Dr. George Tiller was murdered, while serving as an usher at his church, in May 2009 by anti-abortion activist Scott Roeder. Dillard sent a letter to Dr. Means stating that people across the United States would know where Dr. Means shopped, who her friends were, where she lived, and that Dr. Means would be looking under her car daily to check for explosives. United States District Judge J. Thomas Marten stated that "[t]he First Amendment is the absolute bedrock of this country's freedom and I think the ability to express an opinion on a topic is important to one – even if it is controversial – has to be protected so long as the line is not crossed and becomes a true threat. I don't think this letter constitutes a true threat." As a result, Dr.

Means is no longer performing abortions in Wichita.

Mississippi and the other Fifth Circuit states are no strangers to cases involving the First Amendment rights of abortion protesters. In 1996, the United States District Court for the Southern District of Mississippi, Jackson Division, entered its opinion in *United States v. McMillan*. 53 F. Supp. 2d 895. Contrary to the decision in *Dillard*, the *McMillan* court held that a protester was in contempt of an earlier consent decree by shouting, “Where’s a pipe-bomber when you need him?” every time the protester saw the abortion clinic’s physician. *Id.* In 1997, the Fifth Circuit Court of Appeals held that an anti-abortion protester did not enjoy protection by the First Amendment when he threw a bottle at a car driven by an abortion provider and threatened to kill him. *United States v. Bird*, 124 F. 3d 667 (5th Cir. 1997).

Most recently, the Fifth Circuit Court of Appeals held that two city ordinances were not narrowly-tailored and therefore unconstitutional. *Knowles v. City of Tupelo*, 462 F.3d 430 (5th Cir. 2006). In *Knowles*, protesters of an abortion clinic, which was located in a school zone, challenged two city ordinances. *Id.* The City enacted these ordinances in response to demonstrations allegedly causing traffic problems and safety problems of school children. *Id.* at 432. The protesters prayed, displayed anti-abortion signs, distributed literature, and counseled clinic clients on the public sidewalk outside of the abortion clinic located in a school zone. *Id.* at 431. The first ordinance challenged by the protesters was the City’s School Zone Ordinance. *Id.* The School Zone Ordinance prohibited “parades” and “street activity” in school zones when school zone speed limits were in effect.

The Fifth Circuit first addressed the School Zone Ordinance. “An ordinance infringing the right to demonstrate peacefully on public sidewalks must serve and narrowly promote significant government interests.” *Id.* at 434. On its face, the ordinance appeared that it met this requirement by promoting the safety of its citizens; however, it was flawed. The School Zone Ordinance embodied a “wingspan” exception, which allowed for people walking at least an arm’s length apart from each other. *Id.* at 435. “The wingspan exception, however, permits otherwise

‘distracting’ street activity if people so engaged in a school zone stand at arm’s length.” *Id.* at 434. They further stated that this exception would allow thousands of people to stand at arms length and would criminalize a few persons holding signs while standing too closely to each other. *Id.* at 435. The Court used the wingspan exception in its holding that this ordinance was not narrowly-tailored and unconstitutional. *Id.* at 435-46.

The Fifth Circuit then discussed the Parade Ordinance, which required a prior permit for activity of two or more people. *Id.* at 436. The Fifth Circuit agreed with other circuits’ holdings that “ordinances requiring a permit for demonstrations by a handful of people are not narrowly-tailored to serve a significant government interest.” *Id.* The Parade Ordinance made exceptions for funeral processions, students acting under the proper school authorities, governmental agencies, and processions/demonstrations at a fixed location which is not a street or sidewalk. *Id.* at 432. The Court cited *Beckerman v. City of Tupelo*, 664 F.2d 502 (5th Cir. 1981), in which the Fifth Circuit ruled on

a nearly identical ordinance. *Id.* at 436. In *Beckerman*, the court held that the City of Tupelo was willing to disregard potential traffic problems caused by school children and governmental agencies engaging in parades and other public demonstrations, and the court therefore could not accept the City of Tupelo’s argument that its regulation was for traffic control. *Id.* (citing *Beckerman*, 664 F.2d at 513, 517). For this reason, the City of Tupelo’s Parade Ordinance was found to be not narrowly-tailored and unconstitutional. With the rise of cases such as *Dillard*, *McMillan*, *Knowles* and *Bird*, it is likely that the Supreme Court will soon be faced with these issues again.

b. Jackson, Mississippi Code of Ordinances regarding protests.

The Jackson, Mississippi Code of Ordinances, Chapter 54, Article III – Noise was enacted to protect, preserve and promote the health, safety, welfare, peace and quiet for Jackson’s citizens. This ordinance establishes standards to eliminate

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and/or reduce excessive community noise that is harmful to individuals of the community. Prior to the enactment of this ordinance, the previous noise ordinance was nullified, because it was considered to be subjective. Section 54-88 eliminates any subjectivity by providing that “[t]he instrumentation for determining noise sound pressure levels shall be with a sound level meter of standard design.” Section 54-88 further provides a chart of allowable noise levels with Time of Day Allowance. Because the ordinance is content-neutral, intermediate scrutiny applies, and the *O’Brien* standard is appropriate. *Clark*, 468 U.S. 288; *O’Brien*, 391 U.S. 367. This regulation is constitutional, because it (1) is within the constitutional power of the government to regulate noise levels; (2) furthers a substantial government interest by promoting the health, safety and welfare of its citizens; (3) is unrelated to the suppression of free expression; and (4) the restriction is not greater than necessary to further the interest. *See O’Brien*, 391 U.S. 367.

The second ordinance dealing with the constitutional rights of protesters is Jackson, Mississippi Code of Ordinances, Chapter 102, Article II – Sign Regulations. Section 102-27 states that the purpose of this ordinance is to “promote the health, safety, morals and the general welfare of the city” and to “create the legal framework for a comprehensive but balanced system of street graphics and thereby to facilitate an easy and pleasant communication between people and their environment.” Section 102-29 defines the term “handheld sign” as, “[a] temporary sign that is not supported or affixed to any building or permanent structure that is portable and requires physical support and/or display by individual(s).” According to Section 102-31, signs exempt from erection without a permit includes, along with many other exemptions, handheld signs, specifically picket signs and signs used to express or protest activity protected under the First Amendment, if said signs do not interfere or obstruct motor vehicle traffic. Because

the ordinance is content-neutral, intermediate scrutiny applies, and the *O’Brien* standard is appropriate. *Clark*, 468 U.S. 288; *O’Brien*, 391 U.S. 367. This regulation is constitutional, because it (1) is within the constitutional power of the government to regulate signs; (2) furthers a substantial government interest by promoting the health, safety, morals and welfare of its citizens; (3) is unrelated to the suppression of free expression; and (4) the restriction is not greater than necessary to further the interest. *See O’Brien*, 391 U.S. 367.

The final ordinance on the subject of protests is Jackson, Mississippi Code of Ordinances, Chapter 14, Article IV – Special Events. This ordinance is enacted for the public health, safety, morals, good order, convenience and welfare of the community. According to Section 14-180, any person desiring to conduct a special event must obtain a special event permit from the special events coordinator, excluding city-sponsored events and funeral processions. In the past, this regulation required that such a permit be obtained 30 days prior to the event, but that rule no longer applies. Section 14-178 defines “other special event” as an event on property owned or controlled by the city that: (1) is reasonably expected to cause or result in more than 25 people gathering in a park or other public place; (2) is reasonably expected to have substantial impact on such park or other public place; and (3) is reasonably expected to require the provision of substantial public services. In earlier versions of this ordinance, only two or more people gathered together would result in a “special event.” After negotiations, the City of Jackson has amended this number to 25 persons. Because the ordinance is content-neutral, intermediate scrutiny applies, and the *O’Brien* standard is appropriate. *Clark*, 468 U.S. 288; *O’Brien*, 391 U.S. 367. This regulation is constitutional, because it (1) is within the constitutional power of the government to regulate special events, as listed in Section 14-178; (2) furthers a substantial government interest by promoting the health, safety, morals, good order, convenience and welfare of its citizens; (3) is unrelated to the suppression of free expression; and (4) the restriction is not greater than necessary to further the interest. *See O’Brien*, 391 U.S. 367.

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Section Two First Amendment Rights of Government Employees

It is well-established that “public employees do not surrender all of their First Amendment rights by reason of their employment.” *Jordan v. Ector County*, 516 F.3d 290, 294-95 (5th Cir. 2008). Furthermore, a public employee may not be retaliated against for exercising her right to free speech. *Thompson v. City of Starkville*, 901 F.2d 456, 460 (5th Cir. 1990) (See also *Davis v. McKinney*, 518 F.3d 304, 312 (5th Cir. 2008) (“The First Amendment protects a public employee’s right, in certain circumstances, to speak as a citizen on matters of public concern”). However, the United States Supreme Court added a threshold consideration to this analysis, finding that “when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes.” *Garcetti v. Ceballos*, 547 U.S. 410, 126 S. Ct. 1951, 164 L. Ed. 2d 689 (2006). “Restricting speech that owes its existence to a public employee’s professional responsibilities does not infringe on any liberties.” *Id.* at 421-22.

The long-standing test regarding free speech issues for public employees was first set forth by the United States Supreme Court in 1968. *Pickering v. Board of Education*, 391 U.S. 563, 88 S. Ct. 1731, 20 L. Ed. 2d 811 (1968). In *Pickering*, the Court addressed a case involving a public school teacher’s letter to a local newspaper addressing a case involving the funding policies of the school board by whom the teacher was employed. *Id.* at 568. The Court created a balancing test in which the concerns of the employee as a citizen are weighed against the public interest(s) of the state, as the employer. *Id.* In *Garcetti*, the Court expounded on the *Pickering* balancing test in creating a bright-line test on this issue and stated that statements made pursuant to a public employee’s duties are not protected speech under the First Amendment. *Garcetti*, 547 U.S. at 421.

In 2008, the Fifth Circuit held that “[a] public employee’s speech is protected by the First Amendment when the interests of the worker ‘as a citizen commenting upon matters of public concern’ outweigh the interests of the state ‘as an employer,

in promoting the efficiency of the services it performs through its employees.’” *Charles v. Grief*, 522 F.3d 508, 512 (5th Cir. 2008) (quoting *Williams v. Dallas Independent School Dist.*, 480 F.3d 689, 691 (5th Cir. 2007)). In *Grief*, the Fifth Circuit relied on *Garcetti* and stated that “when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.” *Id.* (citing *Garcetti*, 126 S. Ct. at 1960).

In *Jordan*, *supra*, a terminated employee brought action against employer and alleged violations of her First Amendment rights. 516 F.3d 290. The Fifth Circuit stated that for a government employee to succeed on a First Amendment retaliation claim under 42 U.S.C. § 1983, that employee must prove that “(1) she suffered an adverse employment decision; (2) she was engaged in protected activity; and (3) the requisite causal relationship between the two exists.” *Id.* at 295 (citing *Rankin*, 483 U.S. at 383). The court found that the employee’s speech was a hybrid of speech and affiliation, and the court turned to the *Pickering-Connick* balancing test. *Id.* at 299. This test considers the “balance between the interests of the [employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public service it performs through its employees.” *Id.* (quoting *Connick*, 461 U.S. at 142; *Pickering*, 391 U.S. at 568). “The more central a matter of public concern the speech at issue, the stronger the employer’s showing of counter-balancing governmental interest must be.” *Id.* (quoting *Coughlin v. Lee*, 946 F.2d 1152, 1157 (5th Cir. 1991)).

When considering the employee’s actions and the *Pickering-Connick* balancing test, the court considered five factors. The factors are “(1) the degree to which the employee’s activity involved a matter of public concern; (2) the time, place, and manner of the employee’s activity; (3) whether close working relationships are essential to fulfilling the employee’s public responsibilities and the potential effect of the employee’s activity on those relationships; (4) whether the employee’s activity may be characterized as hostile,

abusive, or insubordinate; and (5) whether the activity impairs discipline by superiors or harmony among coworkers.” *Id.* (citing *Brady v. Fort Bend Co.*, 145 F.3d 691, 707 (5th Cir. 1998)).

In May 2011, the Fifth Circuit decided a case in which sheriff’s department employees, who publicly supported sheriff’s election opponent, brought a Section 1983 action against the sheriff and executive chief deputy sheriff, alleging retaliation. *Porter v. Valdez*, 2011 WL 1810607 (5th Cir. 2011). The court cited *Jordan* and held that the test for making a *prima facie* retaliation claim is that the employee (1) suffered adverse employment action; (2) engaged in protected activity; and (3) there was a causal connection between the two. *Id.* (citing *Jordan*, 516 F.3d at 295).

Pursuant to the rulings by both the United States Supreme Court and the Fifth Circuit Court of Appeals, one thing is certain: Government employees do not lose their First Amendment protection and cannot be retaliated against for their protected speech. However, government employees do not enjoy First Amendment protection

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MEDIATION ARBITRATION

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for statements made pursuant to their public employee's official duties, because a governmental employee would not be speaking as a citizen, for First Amendment purposes, in this instance.

Section Three Adult Entertainment

As technology advances, so do the avenues that allow adults to engage in adult entertainment. Whether via Internet, movies, magazines, or sexually oriented businesses engaging in the sale of these items, adults have a plethora of means to obtain sexually-explicit material in today's society. Additionally, brick-and-mortar adult entertainment venues often require an analysis of zoning within the First Amendment framework. As a result, litigation concerning the First Amendment rights of sexually-oriented businesses is at an all-time high.

In *City of Erie v. Pap's A.M.*, a sexually-oriented business featuring nude erotic dancers brought action against the City of Erie for a public indecency ordinance, which prohibited nudity in public places.

529 U.S. 277, 120 S. Ct. 1382, 146 L. Ed. 2d 265 (2000). The dancers were required to wear, at a minimum, "pasties" and a "G-string." *Id.* The Pennsylvania Supreme Court found that this ordinance violated Pap's freedom of expression and the First Amendment. *Id.* The Pennsylvania Supreme Court further held that the ordinance was neither content-neutral nor narrowly-tailored. *Id.* The United States Supreme Court reversed this ruling. *Id.*

The Supreme Court held that such restrictions on public nudity should be evaluated under the *O'Brien* standard of content-neutral restrictions on symbolic speech. *Id.* at 278. If the governmental purpose is unrelated to the suppression of expression, the ordinance need only satisfy the less stringent *O'Brien* standard. *Id.* "If the governmental interest is related to the expression's content, however, the ordinance falls outside *O'Brien* and must be justified under the more demanding strict scrutiny standard." The Supreme Court held that the ordinance was a "general prohibition on public nudity," because it banned all public nudity and did not target nudity that contained erotic messages. *Id.* at 278-79.

The Supreme Court further held that the City of Erie's ordinance banning public nudity satisfied all four factors in the *O'Brien* test. *Id.* at 279. The first factor is whether the government regulation is within the constitutional power of the government to enact. *Id.*; *O'Brien*, 391 U.S. 367. The Court found that "the city's efforts to protect the public health and safety are clearly within police powers" and that the first *O'Brien* factor was met. *Id.* The second factor of the *O'Brien* test for restrictions on symbolic speech is whether the regulation furthers an important or substantial government issue. *Id.* at 279-80. The Court held that the ordinance furthered important government interests of regulating conduct and combating the harmful secondary effects associated with public nudity. *Id.* The third *O'Brien* factor is that the government interest must be unrelated to the suppression of free expression, and the Supreme Court held that this factor was also satisfied. *Id.* at 280. The fourth *O'Brien* factor states that the restriction cannot be greater than is essential to the furtherance of the government's interest. *Id.* In its decision, the Supreme Court clearly stated that this

ordinance only imposed minimal restrictions and that the restrictions leave "ample capacity to convey the dancer's erotic message." *Id.*

In 2002, the Supreme Court again addressed the issue of adult entertainment and the First Amendment when an adult business brought a Section 1983 claim against the City of Los Angeles for its ordinance prohibiting the operation of multiple adult businesses in a single building. *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425, 122 S. Ct. 1728, 152 L. Ed. 2d 670 (2002). In 1977, the City conducted a study and concluded that "concentrations of adult entertainment establishments are associated with higher crime rates in surrounding communities." *Id.* The City enacted an ordinance, which prohibited these sexually-oriented businesses from operating within 1,000 feet of each other or within 500 feet of a religious institution, school, or public park. *Id.* Because there was a loophole in the ordinance permitting this type of concentration in a single structure, the City amended the ordinance to prohibit two or more of these businesses in a single structure. *Id.* The District Court held that this ordinance was in violation of the First Amendment, that it was not a content-neutral restriction of speech, and that it was not necessary to serve a compelling governmental interest. *Id.* The Supreme Court ultimately reversed this decision. *Id.*

In *Alameda*, the Court relied on its decision in *Renton v. Playtime Theatres, Inc.*, in which the Court held that an ordinance prohibiting any adult movie theatre from 1,000 feet of any residential zone, family dwelling, church, park, or school. *Id.* at 433; *Renton*, 475 U.S. 41, 106 S. Ct. 925, 89 L. Ed. 2d 29 (1986). The Court held that (1) the ordinance was a proper time, place and manner regulation; (2) the ordinance was not aimed at the content of the films, but rather on the secondary effects of the theatres, and the ordinance was content-neutral; and (3) the City of Renton showed that the ordinance was designed to serve a substantial government interest and that reasonable alternative avenues of communication remained available. *Id.* at 433-34; *Renton*, 475 U.S. at 46-54. The Court ultimately reversed and remanded *Alameda* for further proceedings. The upshot is that zoning regulations, under narrow circumstances, are

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permissible, but a local government cannot use zoning to eliminate adult entertainment.

The Fifth Circuit Court of Appeals has also dealt extensively with the issue of sexually-oriented business and the First Amendment. In *Fantasy Ranch, Inc. v. City of Arlington*, the Fifth Circuit upheld the City's "Proximity Provisions" of the Sexually Oriented Business Ordinance. 459 F.3d 546 (5th Cir. 2006). The City's Proximity Provisions prohibited any person other than an employee to appear in a state of nudity, and, if nude, that employee was required to be on a stage at least eighteen inches above the floor and at least six feet from any customer. *Id.* at 550. The Proximity Provisions further stated that these regulations would not apply if the employee and customer were separated by a solid, clear, and unbreakable glass or plexiglass wall with no openings. The Fifth Circuit held that the Proximity Provision of the ordinance was content-neutral and satisfied all four prongs of *O'Brien*. *Id.* at 563.

From the above-listed cases, an apparent trend is that an ordinance will be upheld if the government can make a compelling argument. Sexually-oriented businesses in the Fifth Circuit saw a glimpse of hope in 2007 when the court decided *Illusions-Dallas Private Club, Inc. v. Steen*. In *Illusions*, a sexually-oriented business challenged a statute prohibiting certain political subdivisions from obtaining or renewing permits to serve alcohol. 482 F.3d 299, 303 (5th Cir. 2007). The sexually-oriented business was located in political subdivisions that elected to be "dry," and the businesses could only sell alcoholic beverages if they obtained a Private Club Registration Permit. *Id.* The statute, however, denied sexually-oriented businesses the ability to obtain a private club registration. *Id.* The Court held that alcohol regulations of sexually-oriented businesses must be analyzed in light of the First Amendment tests. *Id.* at 306 (citing *Ben's Bar v. Vill. of Somerset*, 316 F.3d 702, 712 (7th Cir. 2003)). Under the *Ben's Bar* test, the Court found that the state failed to articulate a substantial governmental interest furthered by the statute. *Id.* While this "win" for sexually-oriented businesses is a small one, it is one in a continuing series of opinions giving leeway to the adult entertainment industry.

Conclusion

America is one of the most liberal countries when considering freedom of expression. Whether it is by abortion protests, a governmental employee's freedom of speech, or the First Amendment's protection of sexually-oriented businesses, any challenge to a citizen's constitutional rights is not taken lightly by America's court system. Furthermore, the First Amendment is arguably the crux of America's allure. While other countries condemn citizens for speaking ill of their leaders, America tolerates, and sometimes even encourages, this behavior. As

America continues to expand as a diverse country, the expressions and speech of its citizens will continue to diversify. For every person who expresses an opinion, a multitude of others will express their disagreement. Local governments are now faced with balancing the task of protecting citizens, while not infringing on another citizen's First Amendment rights. Clearly, this is not an easy undertaking. Because of this privilege, there is no doubt that the courts will see an increase in litigation in the coming years regarding the First Amendment's protection of its citizens. ■

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*By Judge Cynthia Brewer
11th Chancery District*

The Courthouse, Social Media and ‘Friends’ *What’s happening?*

In all fairness, the internet and social media sites do not directly create many problems that can result from a lack of online caution, judgment and restraint. It is the user’s behavior that causes the trauma/trouble in most instances. Current Mississippi case law reflects this mix of bad judgment and the influx of computer and social media usage in our lives.

Just google it. These sites are daunting in their near omnipresence on the web, far too numerous to read in an afternoon. One website (sexysocialmedia.com) discusses the fact that social media sites are intended to act as online communities where people can publically share information about them and connect with others. Jeff Ringo, a Georgia based legal author, noted that a recent survey of attorneys (unknown sample size and composition) indicated that 81% of attorneys have seen an increase in the use of [Facebook](#), [Twitter](#), [MySpace](#), as well as [YouTube](#) and [LinkedIn](#) information in litigation. There is little doubt that a survey of Chancellors in this State would yield similar results.

Mr. Ringo further opined that, “It seems that over-sharing of information and sloppy attention to covering up deviant behavior are the main causes for the site(s) being used as evidence in bitter divorce battles, not just simply the improved medium for instigating affairs and extra-marital behavior [Facebook](#) presents.” Even a cursory review of online social media sites confirms Mr. Ringo’s above hypothesis. It is truly amazing, or just plain sad what people will put out there for the world to see.

The additional risk? [West Coast Magazine](#) (again found via Google) recently ran a comment on February 21, 2011 which discussed criminal prosecution as an additional risk of indiscriminate use of social media within a divorce

action. Said comment discussed how a Michigan family was enmeshed in a divorce action and in a case before the criminal division of Federal Court concurrently where social media behavior was at issue. That is definitely a novel and disturbing twist as to the intersection of social media and the legal system.

The intersection of social media and the legal system, especially family law, is very real and only increasing as the following cases illustrate.

Miller v. Meyers, 2011 W.L. 210070 (Jan. 21, 2011), W.D.

This Arkansas U.S. District Court matter was another divorce case which involved a concurrent criminal prosecution. The former husband gained access to personal on-line accounts of his wife prior to the divorce commencement. Without a doubt this is not an unusual occurrence in today’s divorce litigation. At this point it must be assumed that your spouse has or has had access to social media sites.

Bower v. Bower, 758 So.2d 405 (Miss. 2000)

This was a Rankin County case involving internet addiction and internet porn. The facts date back to 1996, 1997, and 1998. It didn’t take long for the internet to rear its head in family law matters.

Reinstatement of Holleman, 826 So.2d 1243 (Miss. 2002).

Continued on next page

The Courthouse, Social Media and “Friends”

Possession of child pornography and transportation of such in interstate commerce. Loss of license and criminal prosecution. Facts from 1996 and 1997. Another early case illustrating the early years of internet indiscretions involving themselves into the legal system.

Knight v. Woodfield, 50 So.3d 995 (Miss. 2011)

This case involved an alienation of affections civil action. The Court held that personal jurisdiction over a Louisiana defendant was established in Mississippi by “hundreds of amorous emails, text messages, and phone calls between the Mississippi resident ex-wife of Plaintiff. Sufficient minimum contacts via electronic contact”.

Would the above apply if it were hundreds of Facebook messages and Twitter tweets (or whatever Congressman Weiner was doing)? Who knows where the information superhighway will lead the case law on these vexing issues.

United States v. McBroom, 124 F.3d 533

(3rd Cir., N.J., 1997).

An attorney became obsessed with child porn and the computer. He sought lesser punishment as he argued that he could not stop. Internet addiction in the “early” years of the internet, surely this problem is only getting worse with the ever increasing availability of online pornography and online “relationships.”

Jones v. Jones, 19 So.3d 775 (Miss. Ct. App. 2009).

The *Albright* consideration in this matter included the wife’s excessive usage of the internet, meeting various men via the computer, taking a minor child to England to meet a man she met online and staying with people she met via the internet. On another occasion she left her child at home to travel to Rhode Island in order to move in with the man she met via the internet.

This type of compulsive internet/social media driven behavior would have been nearly impossible, if not impossible,

just ten or fifteen years ago. It’s a new world out there in the social media, a world filled with people who have “relationships” and “affairs” but have never *actually* met.

Gainey v. Edington, 24 So.3d 333 (Miss. Ct. App. 2009).

This case involved a spouse’s use of a certain Social networking website. The court had to deal with issues including numerous photos posted on MySpace and the spouse’s online evidence of hosting “passion parties.”

Rutland v. State, 2008-CT-01544-SCT (Miss. 2011)

Although not necessarily related to social media’s affect on family law, this case is nonetheless very interesting. The defendant, convicted of felony child abuse, appealed to Supreme Court via writ of certiorari, asserting jury misconduct.

Apparently, a juror looked up on the internet some information which was not authorized by the Court. Allegedly the juror sought a definition of abuse and neg-



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lect via some type of online dictionary. Our Supreme Court found that the behavior of the juror was not presumed prejudice and that the Appellant/Defendant “must demonstrate how the jury verdict was prejudiced by the external influence.” Just another example of the intersection of advances in information technology and the law.

Hunsinger v. Hunsinger, 2009 W.L. 4931345 (Tenn. Ct. App. 2009).

In this matter a wife filed for divorce to end 22 years of marriage after discovering her husband was pursuing other alternative lifestyle “relationships” on the internet.

Is there some sense that cheating through social media or another form of online communication is less offensive than cheating in the traditional way or is it just the easy accessibility and “anonymity” of online activity? Who knows, but the issues are here to stay.

I am sure most who are reading this have one very simple and fundamental question: Why in the world would somebody post their whole life online even when they are “seeing” a paramour or engaging in other irresponsible behavior? Or even worse, posting their whole life online while their divorce is still pending before the Court. (There can be no rational explanation for that one.) Could it be that there is some sort of mob mentality related to certain online activities? Could it be that some people suspend rational thought and good judgment as they fall prey to the illusion of online anonymity? Who knows, but what is known is that the issues presented by these activities are here to stay and will present new challenges to the Courts and members of the bar for the foreseeable future.

Recently, I heard testimony of a husband confessing to having sex with another woman in the back of his pickup truck, a Ford F-150 to be precise. His sworn explanation when confronted with the Facebook pages was as follows: his wife made him type/post it online as a way of cleansing and restoring their relationship. Kind of a modern day confessional; who says online social media doesn't have some redeeming virtues.

There is no doubt that these behaviors make one ask many of the previously referenced unanswerable questions, but there

are also practical questions that arise. Is it admissible? In what manner was the internet postings acquired is the first point of inquiry. Was the information in a public setting? Did a “friend” have the ability or access to share the information with others? Does mere access equal permission to print off the subject “evidence”? Was a password required to access the computer or website? Is information in the public domain for distribution? Thought provoking stuff.

Internet usage and social media is here

to stay. How will Courts deal with it? Our Courts are wrestling with issues of admissibility, what is public, what is private, what is online adultery, criminal prosecution and on and on and on. Inevitably, the pace of technological advancement will only increase the number of new challenges in front of us.

Fortunately, there is no doubt in my mind that the Courts and members of the bar will rise to the occasion and thoughtfully meet these new challenges head on. ■

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Environmental Due Diligence and Ethical Obligations in Real Estate Transactions

I How does a Phase I Environmental Site Assessment (ESA) protect a buyer of real estate?

Underdeveloped or undeveloped land contaminated with hazardous chemicals may evade the notice of environmental regulators for decades. A buyer's development plans raise the prospect that hidden or unnoticed contamination will draw the attention of neighbors or regulators. Particularly with regard to property with a history of commercial or agricultural use, buyer's counsel, even if not required by the lender, should consider advising the client to have a Phase I Environmental Site Assessment ("Phase I" or "ESA") conducted to inform the client's decision whether to buy the property. Moreover, the Phase I can lead the client to correct or affirm his or her valuation of the property. Just as important, the ESA is a relatively inexpensive investment to minimize the buyer's risk of a liability for costs associated with investigation and cleanup of contamination.

Generally, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)¹ exposes all current and past titleholders and occupants of contaminated property to the risk of financial responsibility for costs the government may incur investigating and cleaning up a polluted site. CERCLA exempts a party from liability if the contamination on site can be shown to have been caused solely by a third party.

Some CERCLA defenses are only available if the buyer had a Phase I conducted prior to taking title to the property. If the buyer has an ESA conducted by an environmental professional² and the report shows the existence or at least the

possible existence of environmental contamination, the buyer is entitled to the "bona fide prospective purchaser defense." If the Phase I is conducted but the contamination is not found, the buyer can qualify for the "innocent purchaser defense." If the buyer has a Phase I conducted, she can defend that the contamination was caused by contamination at another property.

Bona Fide Prospective Purchaser. If the property was contaminated prior to the time the buyer took title to the property, the buyer is shielded by this defense as long as the buyer conducted "all appropriate inquiry" before closing the purchase transaction. "All appropriate inquiry" is having an environmental professional examine the property's prior ownership and prior uses and other requirements for Phase I's specified in ASTM Standard 1527-05. The Phase I must meet the ASTM standard for the defense to be available to the buyer.

During the performance of an ESA, the environmental professional's chief aim is to discover and disclose in the Phase I Report any "recognized environmental conditions" on the property. A "recognized environmental condition" is "the presence or likely presence of any hazardous substances or petroleum products on a property under conditions that indicate an existing release, a past release, or a material threat of a release of any hazardous substances or petroleum products into structures on the property or onto the ground, ground water, or surface water of the property."³

Continued on next page

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If the Phase I discovers or confirms the presence of contamination, the buyer will likely get a discount in the purchase price. In such cases, if the United States Environmental Protection Agency (EPA) is unable to recover cleanup costs from responsible parties, EPA will have a lien on the property up to the amount of the property's increase in fair market value, attributable to the cleanup. In other words, any windfall enjoyed by the buyer from a government funded cleanup will be subject to an environmental lien in favor of the EPA.

Innocent Purchaser Defense. This defense absolves from liability an owner or lessee who, at the time he acquired the property, "did not know and *had no reason to know* that any hazardous substance . . . was disposed of [on the property]."⁷⁴ For the owner to establish that he had no reason to know of the contamination, he must show that, at the time of acquisition, he undertook "all appropriate inquiries...into the previous ownership and uses of the facility in accordance with good commercial or customary standards and practices . . ." ⁷⁵ This means that the purchaser had a Phase I conducted in accordance with the ASTM standard and the inquiry did not disclose the existence of a recognized environmental condition.

How much inquiry is enough?

"All appropriate inquiry" does not require an exhaustive assessment of the property. ASTM E 1527-05, entitled the "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process" defines good commercial and customary practice for conducting an environmental site assessment of real estate. This ASTM standard specifies how much inquiry is enough to qualify the buyer for the bona fide prospective purchaser defense or the innocent purchaser defense.

What is the scope of the Phase 1?

A Phase 1 does not include a review of wetlands, asbestos or radon unless the owner expressly directs the environmental professional to include this within the scope. It is also important to remember that a Phase I is not an environmental compliance audit. If the potential pur-

chase involves an operating plant, due diligence for the transaction will include an environmental compliance audit which, generally, examines whether the facility is operating with the proper environmental permits in effect and is in compliance with terms of environmental permits and regulations.

One of the more common risks facing a prospective purchaser is the possibility that the property is contaminated or threatened with contamination from petroleum. In many cases this threat is posed by leaking underground storage tanks on or adjacent to the property. CERCLA does not govern the release of petroleum substances. However, a Phase I conducted in accordance with the ASTM standard will disclose to the user of the Phase I report any "recognized environmental conditions" indicating "the presence or likely presence of any hazardous substances or petroleum products" on the subject property. The prospective purchaser should specify that the scope of the Phase I includes the environmental professional's identification of potential petroleum releases.

Engaging the Environmental Professional

Most environmental professionals will propose a letter agreement, engagement letter or other form of contract to govern the performance of the Phase I. Here are some provisions to consider for inclusion in the contract:

1. Have the ESA backed by a bond and/or errors and omissions insurance coverage.
2. Since so many real estate transactions are time sensitive, include in the contract the expected date of completion.
3. Phase I's are customarily performed by the contractor for a fixed fee. The contract may address conditions whereby overages may be charged by the consulting engineer.
4. The engineer should warrant that the work will be performed consistent with standards of care and diligence common in the industry.
5. The engineer should indemnify the client for losses incurred due to the engineer's negligence. It is possible that the

Environmental Due Diligence and Ethical Obligations in Real Estate Transactions

consultant's employees may cause or worsen a spill or leak while conducting the site visit.

6. The engineer's duty of care and the parties to whom a duty of care is owed may differ depending on the state's law which is applied to the contract. Therefore, a choice of law provision is advisable.

7. The engineer should represent to the client that the engineer will inform the client of the discovery of any spill or release of contaminants. This allows the client to confer with counsel to evaluate, in a timely manner, whether the client is obligated to make a report to the Mississippi Department of Environmental Quality.⁶

8. Include in the contract a confidentiality provision whereby the consultant commits to preserving the confidentiality of the findings, the report and any information disclosed to the consultant during the site assessment.⁷

9. Review the proposed contract for a limitation of liability clause. Engineers often limit their liability to the amount of fees your client pays. The environmental consultant uses the contract, in part, to create a privity of contract defense against third parties who claim reliance on the consultant's work or claim to have been impacted by the consultant's work. While the strength of the privity of contract defense in this context is lessening, the existence of the contract and, particularly provisions in the contract can, in some situations, limit or eliminate the contractor's liability to third parties.⁸

It is questionable as to whether these limitation clauses will be enforced in Mississippi. An engineer's ability to use language in the construction contract to prohibit liability to third parties, such as subcontractors and suppliers, was called into question in *Lyndon Property Insurance Company v. Duke Levy & Associates, LLC*.⁹ The Fifth Circuit, applying Mississippi law, held that such clauses are subject to "strict scrutiny...and are not to be enforced unless the limitation is fairly and honestly negotiated and understood by both parties."¹⁰

To whom does the consulting engineer owe a duty of care?

The engineer owes a common law duty of care to his client, "to perform his services with that degree of knowledge, skill and judgment, ordinarily possessed by members" in the profession.¹¹ A common issue which arises with regard to environmental site assessments is whether third parties, who did not contract with the engineer for performance of the ESA, are owed a duty of care by the engineer. Under Mississippi law, it appears that the engineer's contract with the client may create a duty of care owing to those who rely on the engineer's report to their detriment.¹²

In *Columbus*, Clark-Dietz contracted with the City to provide an adequate levee and bridge design. In breaching this contractual obligation, Clark-Dietz breached a tort duty to subcontractors who incurred extra construction expenses proximately caused by the negligent design.¹³

In some cases it is advisable for counsel to be the party who contracts with the consulting engineer to strengthen confidentiality of the engineer's work product. This was demonstrated in *Coastline Terminals of Connecticut, Inc. v. United States Steel Corp.*,¹⁴ where Coastline retained a consultant to perform a Phase I and later attempted to protect the Phase I report and associated documents from discovery in a CERCLA cost recovery action. The court noted that it was undisputed that the consultant was not hired by counsel for the purpose of assisting counsel in providing legal advice. The documents were ruled to be discoverable.

What is the cause for the "bargain purchase?"

The environmental engineer conducting a Phase I is looking for evidence of contamination. This evidence may be imbedded in the sales price of the property. If the price is significantly less than the price of comparable properties, the buyer, who has hired the environmental professional to do the ESA, owes the environmental professional an explanation for the price discrepancy if one exists.¹⁵ Whether the buyer engaged in "all appropriate inquiry" depends in part on whether due consideration has been given to whether the discounted purchase price is evidence of an acknowledgement that the property is contaminated.¹⁶ Where there is a discrepancy between the purchase price and fair market value of the property, the environmental professional must consider whether or not the difference in the purchase price and fair market value is due to the presence of contamination. If the prospective purchaser does not provide information accounting for the difference in price and value, the environmental professional is directed to treat this as a "data gap" and must comment on the significance this gap may have on his ability to identify conditions indicative of contamination.

Review of Historical Sources of Information.

Historical records should be reviewed to investigate prior uses of the property as far back in time as the property's first

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developed use or 1940, whichever is earlier.¹⁷ Historical information is reviewed to develop somewhat of a genealogy of prior uses of the property in order to discover past activities on the property that may have led to releases of hazardous substances or petroleum. A title search may be used to identify prior owners and users of the property. Aerial photographs may be used to discover prior uses of the property. Other sources that can be consulted for this historical information on the property are fire insurance maps, property tax files, USGS topographic maps, building department records, municipal zoning and planning department records, other maps and newspaper archives.

Review of Government Records.

The records search may need to include records of properties in the vicinity of the subject property. The ASTM 1527-05 requires the records search to reach beyond the subject property to include properties with an “appropriate minimum search distance” which the environmental professional must define. The appropriate minimum search distance depends on factors such as the likelihood that hazardous substances or petroleum may have migrated to the subject property from neighboring properties due to geologic or hydrogeologic conditions. The “minimum search distances” for the various types of environmental records are generally a half mile or a mile. Even with respect to search distances recommended in the ASTM standard, the environmental professional retains the discretion to modify the distances specified in the rule, based on the particular circumstances of the subject site in relation to properties of concern in the vicinity.

There are several federal environmental records databases that should be reviewed for mention of the subject property or properties within a half mile or a mile of the subject property. The consultant should use these databases to determine whether the subject property is listed or whether there are, in the vicinity, generators of hazardous waste or leaking underground storage tanks posing a threat of contamination by migration onto the subject property. Mississippi Department of Environmental Quality lists of regis-

tered underground storage tanks and uncontrolled sites should also be reviewed. A review of MDEQ’s files can alert the consultant to pending enforcement actions. Typically, the consultant will make use of an electronic database offered by EDR or Vista which provides site vicinity information by zip code.

Searches for Recorded Environmental Cleanup Liens

The Phase I must include searches for environmental cleanup liens against the property that are filed or recorded under federal or state law. The purpose of this step in the ESA is to discover liens that evidence cleanups on or near the subject

The ASTM 1527-05 requires the records search to reach beyond the subject property to include properties with an “appropriate minimum search distance” which the environmental professional must define.

property. The prospective purchaser or owner of the property may conduct this search or may pass it along to the environmental professional. If the property owner or prospective purchaser conducts the search and fails to surrender the results of the search to the environmental professional, the environmental professional should regard the lack of information as a “data gap” and must opine on the impact of this gap on his ability to identify conditions indicating releases or threatened releases of contaminants on the subject property.

Visual Inspection of the Facility and of Adjoining Properties.

The purpose of the site reconnaissance is to discover information relating to the presence of prior, existing or threatened

releases of hazardous substances or petroleum into the environment at the property. The site visit requires more than a drive-by review of the property. During the site visit, the environmental professional is obligated to observe the property and improvements on the property which are not obstructed from view.

Uses of the property should be noted for identification in the ESA report. Current uses likely to involve the use, treatment, storage, disposal or generation of hazardous substances or petroleum products should be documented. Also in the site visit, the examiner should note existing and prior uses of hazardous substances and petroleum products. The examiner should identify the particular hazardous substances and petroleum products, the quantities, containers and storage conditions. Above and underground storage tanks should be identified. The presence, condition and contents of drums should be noted.

The environmental professional should also make observations specific to the examination of the condition of the grounds of the property. Pits, ponds or lagoons on the property or adjacent to the property should be described in the report, particularly if they appear to have been or are being used in connection with waste disposal or treatment. Stained soil or pavement should be noted. Vegetation that appears to be suffering from something other than a lack of water should be described in the report. The examiner may notice areas on the site that have been filled, which may suggest solid waste disposal. Waste water, storm water or other discharges into drains, ditches or streams should be noted. Wells and septic systems should also be described in the report.

With respect to adjoining properties, the environmental professional must perform a visual inspection of adjoining properties from the property line, from public rights of way and other view points.

Phase I Interviews.

The interview portion of the ESA is designed to obtain information concerning the present and past uses of the property, its condition and the potential of past or present releases or threatened releases of hazardous substances or petroleum

products into the environment. The environmental professional uses his or her discretion to conduct the interviews or parts of the interviews before, during or after the site visit.

The current owner and the current occupant of the property should be interviewed. The environmental professional's interview of the owner and occupant will inquire as to (1) past uses of the property; (2) past ownerships of the property; (3) potential conditions which may indicate the presence of releases or threatened releases of contamination on the property. It is essential for the consultant to identify and interview persons who are particularly familiar with the present uses of the property. The environmental professional is to use his discretion, but is required to consider conducting interviews with current and former facility managers, prior owners, operators and occupants of the property and employees of past and current occupants of the property.

II. What to look for in the Phase I Report

The final report should contain a full description of all evidence of recognized environmental conditions relating to the property. The environmental professional should include in the report an opinion of the impact of the past, present or threatened releases of hazardous substances or petroleum products on the property. You should assure that the report contains the statement that the Phase I ESA was performed in conformance with AAI.

The report need not have any particular structure, format or length. All that is required is that the environmental professional must, in the report, document the results of the investigation. The report should include two certifications or declarations that should read something like this:

"I declare that, to the best of my professional knowledge and belief, I meet the definition of Environmental Professional as defined in 40 C.F.R. Part 312.10."

"I have the specific qualifications based on education, training, and experience to assess a

property of the nature, history, and setting of the subject property. I have developed and performed the all appropriate inquiries in conformance with the standards and practices set forth in 40 C.F.R. Part 312."

III. How to advise the client as to whether a Phase II should be performed

The lawyer reviews the Phase I to check its compliance with ASTM Standard 1527-05, in order to insure that the client has conducted "due diligence" or "all appropriate inquiry" to be entitled to the CERCLA defenses. If the environmental consultant, in the Phase I, concludes that the subject property has a "recognized environmental condition," a Phase II, of some degree, should be performed to confirm the existence or extent of the recognized environmental condition or REC.

The lawyer should not allow the client to accept a Phase I report from a consultant who refers in the report to "potential

REC's or "possible" REC's. The condition is either a REC or it is not and the environmental professional must make a professional determination of whether the condition meets that threshold.

In some cases, the lawyer may need to look more critically at the engineer's conclusion that there are no REC's at a particular property. There are some properties that, inherently, due to their history, are deserving of some degree of a Phase II inquiry. Fitting within this category, with some exceptions, are sites that were formerly used as gas stations, landfills, junk yards, automobile salvage yards, petroleum tank farms, or dry cleaners.

A site with one of these uses in its history should lead the environmental professional to recommend a Phase II or give a reason why one is not needed. If the property has been put to one of these suspect uses, the lawyer should consult with the engineer about a responsible, cost effective sampling plan, particularly if there is no closure documentation avail-

Continued on next page

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able (like underground storage tank closure reports which should be available for a closed gas station).

IV. Ethical obligations in reporting to regulators when the assessments indicate the existence of an environmental problem.

Legal counsel should be involved in the determination of whether an environmental condition must or should be reported to regulators. Many engineering firms instruct their employees to include in their engineering reports a warning to clients that direct the client to consult an attorney to decide whether a legal reporting obligation exists. Sometimes the environmental consultant is performing services in the context of a real estate transaction, merger or business purchase wherein the contract between buyer and seller contains a confidentiality provision, prohibiting disclosure of information to any third party.

Reporting duties, under the various

environmental statutes typically impose reporting duties on owners and operators, not on potential buyers or consultants. The environmental professional may recommend to the owner or operator that a condition should be reported to regulators, but the decision as to whether a report should be made to regulators is not the job of the consultant. Whether an environmental condition warrants a report is an intensively legal issue which should be resolved by the owner or operator in consultation with legal counsel. The exception to this general rule is that common law, not statute, may impose a duty on a consultant to warn in the event the engineer has discovered an environmental condition imposing immediate danger to human health.

Fundamentally, if a release or spill is discovered by the environmental professional during the performance of a Phase I, the engineer has uncovered evidence of a historical event. If a reportable quantity of a hazardous substance has been

released within a twenty-four hour period, a CERCLA reporting duty has been invoked. But in the context of an environmental site assessment, the consultant is more likely to find evidence of a historical event which, within the limits of the Phase I, the quantity of release is unknown, the rate at which the release occurred is unknown, even the age of the release is probably unknown. The question, therefore, is not whether there is a reporting duty under CERCLA—there is not. The question is whether discovery of a historical release imposes a reporting duty outside of CERCLA. The answer to this question also is no, unless of course there is an imminent threat to human health.

Under CERCLA, the obligation to report falls on the “person in charge” of the facility or vessel from which there is a reportable release.¹⁸ Neither CERCLA nor its regulations define the phrase “person in charge.” A person in charge is obligated to report only those releases which

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exceed a reportable quantity within a 24-hour period.¹⁹

Some contaminated properties have been bought and sold several times without notification to environmental regulators of contamination discovered during due diligence. The 24-hour reporting requirement omits any obligation on a party to disclose the discovery of historic contamination. The contamination may exceed cleanup levels, but the discovery is not reportable because it is unknowable whether a reportable quantity was released within a 24-hour period.

The effectiveness of environmental regulation is dependent on a system of self-reporting. However, without a requirement to report the discovery of historic contamination, landowners who are selling a piece of property have little incentive to volunteer a disclosure of this information to a federal or state regulator. Owners are likely to be slow to generate information on contamination because it likely will trigger a regulator-imposed cleanup by the landowner. The disclosure to a regulator, likewise, will become part of the public record, driving down the market value of the property and creating a risk of lawsuits by adjoining or downhill property owners.²⁰

Sellers have used “no look” contracts that prohibit the buyer from investigating or disclosing contamination on the purchased piece of property. The buyer’s right to indemnification may, in these cases, be triggered only if a regulator compels the buyer to regulate the property. These contractual disincentives to proactive environmental action can potentially allow contamination to migrate off-site, exposing other persons in the area to risks of exposure.²¹

The Mississippi Rules of Professional Conduct

A lawyer is obligated to maintain confidence of “information relating to the representation of the client unless the client gives informed consent...”²² Therefore, the lawyer’s duty of confidentiality under Rule 1.6 covers more information than does the attorney-client privilege. Mississippi Rule of Professional Conduct (MRPC) 1.6 imposes a duty of confidentiality on the lawyer with regard to information “relating the representa-

tion, whatever its source.”²³

Rule 1.6 “prohibits disclosure of information a client wishes to conceal, even if the lawyer knows the concealment to be materially misleading and if the other party in a transaction has expressed an interest in the information.”²⁴ Therefore, the lawyer’s knowledge of

One of the most difficult situations for the lawyer is when the lawyer, in the course of representing the client, becomes aware of an environmental condition threatening human health.

environmental problems discovered on a piece of property is governed by MRPC 1.6 regardless of whether the information was obtained through a privileged communication. As a result, disclosure requirements imposed by environmental law and regulation may involve information protected the confidentiality obligation of Rule 1.6.²⁵

One of the most difficult situations for the lawyer is when the lawyer, in the course of representing the client, becomes aware of an environmental condition threatening human health. For example, the attorney may become aware of con-

tamination that has migrated into groundwater utilized as a public drinking water source or tapped by private water wells. The lawyer may become aware of this information by reviewing a Phase I or, more likely, a Phase II report indicating a release. The lawyer should remember that the disclosure of this information to environmental officials may only be made after the client’s permission has been sought. However, “Rule 1.6 also permits disclosure of information necessary to prevent ‘reasonably certain death or substantial bodily harm.’”²⁶

Moreover, the lawyer may be aware of the client’s misrepresentation to a potential buyer of the known environmental conditions of the contaminated property. “A lawyer may not even reveal a client’s fraud, *unless* the fraud is ‘reasonably certain’ to cause ‘substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer’s services and the lawyer reasonably believes that disclosure is necessary to prevent it.’”²⁷ This language is consistent with Mississippi Rule of Professional Conduct 1.6(b). “Some states and the latest version of the ABA’s model rules also permit some disclosure of client confidences to prevent financial or property interest harms or adverse health consequences to third parties.”²⁸

Under Rule 1.16(a) (1), a lawyer may withdraw from the representation of a client if “the representation will result in violation of the rules of professional conduct or other law.”²⁹ Therefore, if the law imposes a reporting duty of a spill or

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release and the client refuses to provide counsel permission to make the report, the lawyer should withdraw.

The lawyer's review of a current or pre-existing Phase I or Phase II may reveal evidence that a non-client has violated environmental laws. For example, the engineer's report may disclose proof that the existing owner or a former owner of the property allowed the disposal of chemicals or hazardous wastes onto the ground, buried in the ground or poured into a body of water. The question is whether the attorney is duty bound to disclose this evidence of an environmental crime to regulatory or law enforcement authorities.

A similar question was addressed by the Mississippi Bar in Ethics Opinion 213: "Does an attorney who becomes privy to information in a sworn statement by a non-client regarding past violation of state or federal law have an ethical duty to report such violation of law to the appropriate legal authorities?" In that matter, the non-client admitted in a deposition that he had not filed federal or state income tax returns. The Ethics Committee opined that, "Under the circumstances, Rule 8.4(d), which prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice, does not impose upon the attorney the ethical obligation to report the admission by the non-client."

Mississippi Rule of Professional Conduct 8.4(d) states that, it is "professional misconduct for a lawyer to....engage in conduct that is prejudicial to the administration of justice." The Committee distinguished the situation where the criminal violation "directly impact[s] the administration of justice in any tribunal in which the parties are appearing or have appeared." The Committee contrasted the fact situation in Opinion 213 with the fact situation considered by the Committee in Opinion 205, where counsel representing a party and counsel adverse to that party were obligated to disclose the party's admission of perjury in another proceeding.

It would seem to follow that the lawyer who receives proof that a non-client has committed an environmental crime does not commit an ethics violation by failing to turn over that information to environ-

mental regulatory or law enforcement authorities, since the withholding of that information does not directly compromise a pending legal proceeding.

The Ethics Committee, in Opinion 213, observes that the information obtain by the lawyer regarding the non-client constituted confidential "information relating to the representation of a client."³⁰ "Since the lawyer is under no ethical obligation of disclosure, in the absence of any legal obligation to disclose the information, the lawyer may not do so without the consent of his client after consultation.³¹ Of course the lawyer must explain the matter to the extent necessary to permit the client to make an informed decision concerning that question, including any negative ramifications for the client."³²

Opinion 213, also explains the proper procedure for the lawyer to follow in the event that the law obligates the lawyer to report the information to authorities: "If the lawyer determines that he is obligated by law to report the probable past criminal violation, he should first seek his client's informed consent. If the client refuses that consent, the lawyer may proceed to make any report required by law. Rule 1.6(c) provides that 'a lawyer may reveal such information to the extent required by law or court order.'" ■

1 42 U.S.C. §§ 9601-9675.

2 In order for an environmental professional to oversee an environmental site assessment, the professional must meet minimal educational, certification or licensing criteria and have sufficient experience, as specified in the ASTM E1527-05 Appendix X2.

3 ASTM E1527-05 §3.2.74.

4 42 U.S.C. § 9601(35)(A)(i)(emphasis added).

5 42 U.S.C. § 9601(35)(B)(i)(I).

6 See Consulting Agreements Deskbook, *Environmental Consultants*, Appendix 4-A "Checklist for Selecting and Contracting with Environmental Consultants" (June 2010).

7 See Checklists for Corporate Counsel, *OHS&A Environmental Checklists*, "Checklist for Selecting and Contracting with Environmental Consultants" (May 2010).

8 Joel Schneider, *The Expanding Liability of Environmental Consultants to Third Parties*, 13 Vill. Envtl. L.J. 235 (2002).

9 475 F.3d 268 (5th Cir. 2007)

10 Id. at 272.

11 Mayor and City Council of Columbus v. Clark-

Dietz & Associates-Engineers, Inc., 550 F. Supp. 610, 634-624 (N.D. Miss. 1982)(citations omitted).

12 See Columbus, 550 F. Supp. at 624 ("Because of this contractual obligation to the owner, the architect owes a further duty, sounding in tort, to the contractor who relies upon the design to his economic detriment").

13 Id. See also Magnolia Construction Co. v. Mississippi Gulf South Engineers, Inc., 518 So.2d 1194, 1201-1202 (Miss. 1988)(recognizing that the project design professional may owe a duty of care to the project contractor even with no contract between those two parties. "Mississippi law allows third parties to rely on a design professional's contractual obligation to the owner.").

14 221 F.R.D. 14 (D. Conn. 2003).

15 ASTM E1527-05 §6.5.

16 See 42 U.S.C. § 9601(35)(B)(iii)(VIII) (All appropriate inquiry includes examination of the "relationship of the purchase price to the value of the property, if the property was not contaminated.").

17 ASTM E1527-05 § 8.3.2.

18 42 U.S.C. § 9603(a).

19 40 CFR § 302.6(a).

20 Larry Schnapf, *Playing Poker with Pollution: Why It is Time to Change the CERCLA Reporting Obligations*, at 8, *Natural Resources & Environment*, (ABA Section of Environment, Energy, and Resources, Winter 2011)[hereinafter Schnapf].

21 Schnapf at 8.

22 Mississippi Rule of Professional Conduct 1.6(a).

23 Pamela R. Esterman, *Environmental Law Practitioner's Guide to the Model Rules*, at 13, *Natural Resources & Environment*, (ABA Section of Environment, Energy, and Resources, Winter 2011)[hereinafter Esterman](quoting Model Rule of Professional Conduct 1.6 comment 3).

24 Esterman at 13.

25 Esterman at 14.

26 Esterman at 13 (quoting Model Rule of Professional Conduct 1.16(a)).

27 Esterman at 13 (quoting Model Rules of Professional Conduct Rule 1.6(b)(emphasis added).

28 Esterman at 13 (citing Restatement (Third) of Law Governing Lawyers sec.67 cmt.b (2000); Model Rules of Professional Conduct R.1.6(b).

29 Mississippi Rule of Professional Conduct 1.16(a)(1).

30 Mississippi Bar Ethics Committee Op. 213 (quoting Mississippi Rule of Professional Conduct 1.6).



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13th Annual James O. Dukes Law School Professionalism Orientation Program



Tammra Cascio, Jackson, Judge Percy Lynchard, Hernando, and Guff Abbott of Oxford lead a discussion at UM Dukes Professionalism Program.



Guy Mitchell of Tupelo makes a point at UM Professionalism Program while Judge Robert Bailey of Meridian listens.



Devo Lancaster, Winona, comments while co-facilitators Leigh Ann Rutherford, Hernando, and Harold Mitchell of Greenville listen.



Richard Noble, Indianola; Steve Ray, Ridgeland; and Sandy Sams of Tupelo listen as MB Past President Nina Tollison of Oxford makes a point.



Judge Kenneth Burns, Okolona and Briggs Smith, Batesville, lead a breakout session at UM Professionalism Program in Oxford.

Ben Griffith of Cleveland speaks at Dukes Professionalism Program at the University of Mississippi Law Center.





Senator Briggs Hopson of Vicksburg speaks during a breakout session at MC Professionalism Program.



John Maxey of Jackson speaks while U.S. District Judge Carlton Reeves (right) listens.



Charles Ozier (left) of Jackson, Rankin County Judge Kent McDaniel (center) of Brandon and Chief Justice Bill Waller (right) of Jackson participate in Dukes Professionalism Program at MC Law.



Court of Appeals Judge Virginia Carlton of Columbia speaks at MC Law Program.



Judge Winston Kidd (left) of Jackson makes a point while Joey Diaz (right) of Jackson looks on.



Roy Campbell of Jackson makes a point as Mark Chinn of Jackson listens at the Professionalism Program at MC Law.



Steven Orlansky of Jackson (left) listens while Judge Vernon Cotten of Carthage speaks during MC Professionalism Program.



Court of Appeals Judge Jimmy Maxwell (center) of Oxford speaks during MC Law Professionalism breakout program.

Continued on next page

James O. Dukes Law School Professionalism Orientation Program



Judge David Strong (left) of McComb and Lynn Ladner of Jackson facilitate a breakout session at MC Law Professionalism Program.



Fred Banks (left) of Jackson listens as Maxine Lawson-Conway of Moss Point speaks during breakout session at MC Law.



Walter Weems (left) of Jackson looks on as Beth Orlansky of Jackson addresses a breakout session.



Patti Golden of Gulfport facilitates a breakout session at a Professionalism Program in Clinton.



MB President Elect Lem Adams (left) of Brandon and Judge Lisa Dodson of Gulfport participated in Professionalism Program at MC Law.



Scott Welch (center) of Jackson makes a point during a breakout session at MC Law Professionalism Program.



MB President Hugh Keating of Gulfport speaks at a breakout session at Dukes Professionalism Program at MC Law.



Bar Foundation President Karen Sawyer of Gulfport listens as a MC law student speaks during a breakout session.

A special thanks to the following Mississippi Attorneys and Judges who served as facilitators during the Bar's 2011 James O. Dukes Law School Professionalism Orientation Program

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Final Disciplinary Actions

Disbarments, Suspensions, Inactive Disability Status and Irrevocable Resignations

Vann F. Leonard of Madison, Mississippi: A Complaint Tribunal appointed by the Supreme Court of Mississippi accepted the **Irrevocable Resignation** of Vann F. Leonard in accordance with Rule 10.5, MRD, in Cause No. 2010-B-2009.

Joseph Patrick Gautier of Biloxi, Mississippi: The Supreme Court of Mississippi **Disbarred** Mr. Gautier from the practice of law based upon his guilty plea in the Circuit Court of Harrison County to one count of possession of a controlled substance. The Mississippi Bar, upon obtaining a certified copy of the conviction, had previously filed a Formal Complaint (Cause No. 2010-BD-01332-SCT) under Rule 6 of the Mississippi Rules of Discipline (MRD).

Michael R. Wall of Oxford, Mississippi: The Supreme Court of Mississippi **Disbarred** Mr. Wall from the practice of law based upon his guilty plea in the Circuit Court of Lafayette County Court to two counts of possession of a controlled substance. The Mississippi Bar, upon obtaining a certified copy of the conviction, filed a Formal Complaint (Cause No. 2011-BD-00630-SCT) under Rule 6, MRD.

Roy K. Smith of Jackson, Mississippi: A Complaint Tribunal appointed by the Supreme Court of Mississippi **Disbarred** Mr. Smith in a Formal Complaint (Cause No. 2010-B-700) for violations of Rules 1.2(a), 1.3, 1.4(a), 1.5, 1.15(a and b), 3.3(a)(1 and 4) and (b), 8.1(b) and 8.4(a, b, c and d) of the Mississippi Rules of Professional Conduct (MRPC).

Of particular note was Mr. Smith's violations of Rule 1.15(a and b), MRPC, in Count 1 of the Formal Complaint. On May 21, 2009, Mr. Smith, representing a client in a criminal matter, requested that a cash bond in the amount of \$98,000.00 be refunded by the Circuit Clerk of Madison County. Mr. Smith deposited the funds in his lawyer trust account, but failed to subsequently refund the bond money to his client, despite numerous requests. Mr. Smith gave his client an

NSF check drawn on his business account for the \$98,000.00. When it was returned, the client asked the Circuit Court to assist in getting the funds returned. At a Show Cause hearing on the matter, Mr. Smith falsely advised the Court that he and the client had a fee dispute and that his lawyer trust account had sufficient funds to cover the \$98,000.00. The Circuit Court held him in civil contempt until the funds were returned. Mr. Smith eventually borrowed funds from relatives and third parties to repay the client.

A review of Mr. Smith's lawyer trust account showed he converted \$48,222.90 from his lawyer trust account to complete the purchase of a home for Mr. Smith. The review also showed that Mr. Smith had commingled his funds with client funds.

Rule 1.15, MRPC, provides that a lawyer shall hold clients' and third person's property separate from the lawyer's own property and that the lawyer shall promptly deliver to the client any funds or property to which they are entitled, upon request.

David A. Roberts of Pascagoula, Mississippi: A Complaint Tribunal appointed by the Supreme Court of Mississippi **Suspended** Mr. Roberts for one (1) year in a Formal Complaint (Cause No. 2011-B-96) for violations of Rules 1.2(a), 1.3, 1.4, 1.16(a and d), 8.1(a and b) and 8.4 (a and d), MRPC. This one (1) year suspension is to run consecutively with the one (1) year suspension that Mr. Roberts began serving on January 18, 2011.

Mr. Roberts was personally served with a copy of the Formal Complaint and failed to answer within the time allowed. The Bar subsequently applied for default, which was later entered on March 18, 2011. The Bar also filed a Motion for Default Judgment on the same day. Mr. Roberts failed to answer or respond to any pleading or motion filed in this cause by The Bar. Default Judgment was entered against Mr. Roberts on April 8, 2011. The Complaint Tribunal further requested the Bar and Mr. Roberts to file briefs regarding the appropriate discipline to be imposed. The Bar timely filed a brief. Mr. Roberts filed no brief.

Rule 1.2(a), MRPC, provides that a lawyer shall abide by a client's decisions concerning the objectives of representation and shall consult with the client as to the means by which they are to be pursued. Rule 1.3, MRPC, provides that a lawyer shall act with reasonable diligence and promptness in representing a client. Rule 1.4, MRPC, provides that a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information. Rule 1.16(a), MRPC, provides that a lawyer shall withdraw from representation of a client if the representation will result in violation of the rules of professional conduct or other law or the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client. Rule 1.16(d), MRPC, provides that upon termination of representation, a lawyer shall take reasonable steps reasonably practicable to protect a client's interests, such as surrendering papers and property to which the client is entitled. Rule 8.1(a) and (b), MRPC, provides that a lawyer shall not knowingly make a false statement of material fact or fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information by a disciplinary authority. Rule 8.4(a and d), MRPC, provides that it is professional misconduct for a lawyer to violate or attempt to violate the rules of professional conduct or engage in conduct that is prejudicial to the administration of justice.

Jesse B. Goodsell of Jackson, Mississippi: A Complaint Tribunal appointed by the Supreme Court of Mississippi **Suspended** Mr. Goodsell for thirty (30) days in Cause No. 2011-B-0036 for violation of Rule 8.1(b), MRPC.

In the underlying matter that formed the basis of the Formal Complaint, Mr. Goodsell either failed or refused to respond to the Bar complaint filed by one of his former clients. The Bar sent a demand for Mr. Goodsell to respond to the Bar complaint. Rather than responding at the time, Mr. Goodsell requested an extension of time to respond. He subsequently requested additional time on two

Continued on next page

more occasions. All his requests for an extension of time to respond were granted. Mr. Goodsell failed to file any response to the Bar Complaint. The Committee on Professional Responsibility considered the Complaint without the benefit of Mr. Goodsell's response and voted to have General Counsel file a Formal Complaint.

This violation of Rule 8.1(b) was not Mr. Goodsell's first. Mr. Goodsell has been issued private and public reprimands for similar misconduct. He has also been suspended for a period of 14 days for a subsequent violation. Mr. Goodsell is currently suspended 6 months for another violation of Rule 8.1(b). Rule 8.1(b), MRPC, requires a lawyer to respond to a lawful request for information relating to a bar disciplinary matter.

Public Reprimands

Michael E. Robinson of Jackson, Mississippi: A Complaint Tribunal appointed by the Supreme Court of Mississippi imposed a **Public Reprimand** upon Mr. Robinson in Cause No. 2010-B-1323 for violations of Rules 1.15, 5.1(a) and 8.3, MRPC.

On or about August 17, 2009, Mr. Robinson learned that his then-law partner, Roy K. Smith ("Mr. Smith"), had misappropriated client funds in the amount of \$98,000.00 from their law firm's lawyer trust account. Up until August 17, 2009, Mr. Robinson had abdicated responsibility for management of the law firm's lawyer trust account to Mr. Smith and had no personal knowledge that Mr. Smith had misappropriated client funds. After August 17, 2009, Mr. Robinson learned from bank records that firm operating funds and earned attorney fees were commingled with client funds. Mr. Robinson later failed to report Mr. Smith's misconduct to the Office of General Counsel for the Bar.

Rule 1.15, MRPC, provides that a lawyer shall hold clients' and third person's property separate from the lawyer's own property. Rule 5.1(a), MRPC, provides that a partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform

to the rules of professional conduct. Rule 8.3, MPRC, provides that a lawyer having knowledge that another lawyer has committed a violation of the rules of professional conduct that raises substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate disciplinary authority.

Christian T. Goeldner of Southaven, Mississippi: The Committee on Professional Responsibility imposed a **Public Reprimand** in docket number 09-410-2 for violations of Rules 1.7(a) and 8.4(a), MRPC.

A client filed a Bar complaint against Mr. Goeldner asserting that he hired Mr. Goeldner in November 2009 to represent him in collecting a judgment the client obtained through another lawyer. Mr. Goeldner charged a fee of \$1,500.00 for the preparation and filing of writs of execution and garnishment for the creditor client.

At the time Mr. Goeldner and the creditor client entered into an attorney-client relationship, Mr. Goeldner was unaware that his law firm had previously undertaken the representation of the judgment-debtor regarding the filing of a petition for relief in the United States Bankruptcy Court for the Northern District of Mississippi. The judgment-debtor had engaged the firm to file the petition prior to November 2009; although no petition had actually been filed.

After the writs of execution and garnishment were issued on December 9, 2010, the judgment-debtor appeared the following day at Mr. Goeldner's law office and demanded the firm file his bankruptcy petition, at which time Mr. Goeldner first discovered the conflict of interest. Immediately upon discovery, Mr. Goeldner attempted to contact the creditor client to advise him of the conflict. His attempt was unsuccessful. Notwithstanding, Mr. Goeldner directed his staff to file the judgment-debtor's bankruptcy and to cancel the writs of garnishment and execution that had been issued. Mr. Goeldner offered to refund the creditor client's fees and expenses paid and to allow the client the opportunity to retrieve his file.

Rule 1.7(a) MRPC, provides that a lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless the lawyer reasonably believes the representation will not adversely affect the relationship with the other client and each client has given knowing and informed consent. In this case, the creditor client and the judgment-debtor were clearly adverse. Therefore, Mr. Goeldner could not represent either of them. Mr. Goeldner was unaware of the conflict until after the judgment-debtor appeared to file his bankruptcy case. Once Mr. Goeldner was aware of the conflict, he withdrew as the creditor client's attorney. He also took action to dismiss the writs of garnishment and execution he had obtained for the client. However, he continued to represent the judgment-debtor.

According to the comment to Rule 1.7, MRPC, when a lawyer withdraws from representation because a conflict arises after representation has begun, whether the lawyer may continue is controlled by Rule 1.9, MRPC. Rule 1.9(a) provides that a lawyer who has formerly represented a client in a matter shall not thereafter represent another client in the same or substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation. The judgment-debtor's matter was the same as or substantially related to the creditor client's matter. Their respective interests were materially adverse. The creditor client did not consent to Mr. Goeldner's representation of the judgment-debtor, nor did Mr. Goeldner consult with the creditor client prior to the dismissal of the writs of garnishment and execution. Therefore, Mr. Goeldner violated Rule 1.7(a), MRPC, when he continued to represent the judgment-debtor in his bankruptcy case in which his client was a creditor. Moreover, Mr. Goeldner took affirmative steps to dismiss the creditor client's writs of garnishment and execution. In doing so, Mr. Goeldner took affirmative steps that may have resulted in the creditor client's inability to collect on his writ of garnishment that had already been served. ■

The Mississippi Bar Memorial Resolution October 11, 2011

WHEREAS, The Mississippi Bar gathers today with the Justices of the Mississippi Supreme Court to pay tribute to those attorneys who departed this life during the past year; and

WHEREAS, in mourning these colleagues, we recognize that each had a role in shaping our honorable profession. Some gave decades of service; the careers of others were cut short; but each had an impact on the endless pursuit of justice and the constant upholding of the dignity of law. They modeled for us a profession of dedication, honor, integrity, and wisdom, and reminded us that we are called upon "to do justice, love mercy, and walk humbly with our God;" and

WHEREAS, these individuals, while devoted to the noble practice of law, also shared their lives, love, and devotion with their families, friends, and communities throughout the years, we today celebrate all their countless contributions to their profession, their communities, and their families and friends; and

WHEREAS, we give thanks for the great and honorable profession to which those memorialized today devoted their lives, and we acknowledge that without the devotion they exemplified the freedoms we enjoy would be endangered and our individual lives would be less rich; and

WHEREAS, in the reading of these names, we express joy and thanksgiving for each of the following individuals who impacted our lives through their service to our profession and with their dedicated friendship;

RICHARD LLOYD ARNOLD, Jackson, Admitted 1965
JOHN E. ASHCRAFT, JR., Greenville, Admitted 1972
CURTIS HOMER AUSTIN, Columbus, Admitted 1977
ROBERT GLENN BARNETT, Jackson, Admitted 1961
BILLIE R. BARTON, Brandon, Admitted 1970
ROBERT HARTWELL BOWLING, Ridgeland, Admitted 1954
CARY EGBERT BUFKIN, Jackson, Admitted 1948
FRED M. BUSH, JR., Tupelo, Admitted 1948
MOSS M. BUTLER, Jonestown, Admitted 1940
FREDERICK T. CARNEY, Memphis, TN, Admitted 1948
WILLIAM O. CARTER, JR., Jackson, Admitted 1950
CHARLES CLARK, Jackson, Admitted 1948
MITCHELL D. COLBURN, Tupelo, Admitted 1980
WILLIAM DEWITT COLEMAN, Jackson, Admitted 1948
WILLIAM R. COLLINS, Canton, Admitted 1979
ROBERT LACEY CROOK, Florence, Admitted 1965
GEORGE ERVIN ESTES, JR., Gulfport, Admitted 1950
LURA C. ETHRIDGE, Madison, Admitted 1959
SAMUEL WILLIAM FULLER, SR., Tallahassee, FL, Admitted 1946
JOSEPH ANTHONY GENTILE, Jackson, Admitted 1979
NOEL P. GIUFFRIDA, Ridgeland, Admitted 1973
JOE C. GRIFFIN, Ackerman, Admitted 1979
WILLIAM LEE GRIFFIN, JR., Tupelo, Admitted 1975
JOHN MARSHALL GROWER, Madison, Admitted 1950
MICHAEL T. GUTHRIE, SR., Ridgeland, Admitted 1982
ARNOLD FREDERICK GWIN, Greenwood, Admitted 1963
WILLIAM G. HATTON, Bolivar, TN, Admitted 1995
THOMAS J. HOLIFIELD, Laurel, Admitted 1952
WILLIAM D. M. HOLMES, Arlington, VA, Admitted 1964
JONES H. HOSKINS, Brookhaven, Admitted 1961
CHARLES CLARK JACOBS, JR., Cleveland, Admitted 1947
GEORGE T. KELLY, JR., Greenville, Admitted 1974
MARTIN A. KILPATRICK, Greenville, Admitted 1968
JAMES P. KNIGHT, JR., Ridgeland, Admitted 1946
DUNNICA O. LAMPTON, Jackson, Admitted 1975
JAMES W. LEE, Forest, Admitted 1951
THAD LEGGETT, III, Magnolia, Admitted 1961
FRANK B. LIEBLING, Tupelo, Admitted 1974
SAMUEL THOMAS LLOYD, JR., Madison, Admitted 1948
WILLIAM B. LOVETT, JR., Jackson, Admitted 2001
WILLIAM FORD McGEHEE, Vicksburg, Admitted 1942
VALERIE RANA CHILDERS MEREDITH, Oxford, Admitted 1999
MILTON H. MITCHELL, Brandon, Admitted 1946
JOHN PAUL MOORE, Starkville, Admitted 1959
JEAN D. MUIRHEAD, Knoxville, TN, Admitted 1967
DAN STEWART MURRELL, Memphis, TN, Admitted 1968
WALTER NETTLES, Brookhaven, Admitted 1970
PAUL N. NUNNERY, SR., Ridgeland, Admitted 1948
JANE CLELAND O'MARA, Brandon, Admitted 1996
LYLE M. PAGE, Biloxi, Admitted 1954
RUBEL L. PHILLIPS, Jackson, Admitted 1951
THOMAS W. PREWITT, Madison, Admitted 1960
WOODROW W. PRINGLE, III, Gulfport, Admitted 1979
HOSEA M. RAY, Tupelo, Admitted 1949
MARGARET H. REDMOND, Jackson, Admitted 1981
WILLIAM B. RIDGWAY, Jackson, Admitted 1947
JOHN HILLMAN ROGERS, Brandon, Admitted 1952
HARVEY T. ROSS, Clarksdale, Admitted 1946
DAN M. RUSSELL, JR., Gulfport, Admitted 1937
JOSEPH O. SAMS, JR., Columbus, Admitted 1959
JOE H. SANDERSON, Brandon, Admitted 1965
WILLIAM F. SELPH, JR., McComb, Admitted 1954
L. T. SENTER, JR., Aberdeen, Admitted 1959
BILLY W. SHELTON, Saltillo, Admitted 1959
JOHN W. SHELTON, West Palm Beach, FL, Admitted 1966
EARL S. SOLOMON, JR., Greenville, Admitted 1961
AVERY MARTIN SPRINGER, JR., Brandon, FL, Admitted 1967
GREGG L. SPYRIDON, New Orleans, LA, Admitted 1977
J. JOSHUA STEVENS, JR., West Point, Admitted 1966
THOMAS G. STEWART, Raymond, Admitted 1978
ALONZO H. STURGEON, Woodville, Admitted 1961
CHARLES MAXWELL SUDDUTH, Jackson, Admitted 1965
THOMAS HENRY SUTTLE, JR., Jackson, TN, Admitted 1971
HUGH W. TEDDER, JR., Jackson, Admitted 1981
CHARLES GREGORY THOMAS, D'Iberville, Admitted 1993
GEORGE RANDLE THOMAS, Philadelphia, Admitted 1990
JAMES H. C. THOMAS, JR., Hattiesburg, Admitted 1964
ROBERT HANSFORD TYLER, Biloxi, Admitted 1982
JOSEPH WAYNE WALKER, Mendenhall, Admitted 1950
MARGARET ELIZABETH WALKER, Biloxi, Admitted 1980
CHRISTOPHER W. WEBSTER, Washington, DC, Admitted 1992

NOW, THEREFORE, BE IT RESOLVED that the members of The Mississippi Bar assembled in this Memorial Service before the Supreme Court of Mississippi on this the 11th day of October, 2011, pay tribute and honor to our deceased colleagues, and recognize their manifold contributions to our State, to our profession, and our society.

BE IT FURTHER RESOLVED that the members of The Mississippi Bar here assembled before the members of the Mississippi Supreme Court hereby extend their deepest sympathy and respect to the families of those colleagues whom we memorialize today.

BE IT FURTHER RESOLVED that this Memorial be made a part of The Mississippi Bar's permanent records and with the permission of the Justices, be entered into the Minutes of the Supreme Court of the State of Mississippi.

Respectfully submitted,
THE MISSISSIPPI BAR
Hugh D. Keating, President

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Jennifer G. Hall
Young Lawyers Division President
2011-2012

At the State Bar annual meeting on September 3-4, 1936, the “Junior Bar Section” was founded by New Albany lawyer, Hugh N. Clayton, its first chairman. Seventy-five years later, I am honored to serve as President of what is now known as the Young Lawyers Division, and I am proud to report that the YLD is off to another banner year.

On July 27, 2011, our Seminars Committee, chaired by **Stephanie Jones**, hosted the Bridge the Gap CLE at the Mississippi Sports Hall of Fame. Attendees had the option of attending in person or live via an online webcast, and this year’s program provided 6.0 hours of CLE credit, including 3.0 hours of basic skills and 3.0 hours of ethics/professionalism. Speakers included Chief Justice William L. Waller, Jr.; Chancery Judge Edward E. Patten, Jr.; Circuit Judge Andrew K. Howorth; Madison County Chancery Clerk Arthur Johnston; Court Administrator Sherry Davis; W.C. “Cham” Trotter III; La’Verne Edney; Gee Ogletree; Dennis Miller; Vicki Rundlett; and C. York Craig, Jr. This new format was well received by both the attendees and the speakers, and the Seminars Committee is continuing to develop a proposal to expand the ethics/professionalism aspect of the Bridge the Gap seminar for our newly admitted members. More details on that to follow.

Speaking of newly admitted members, the Fall Bar Admissions Ceremony was held on September 27, 2011, at Thalia Mara Hall in Jackson. Once again, the Bar

Young Lawyers Division News

Admissions Committee, led this year by Committee Chair **Andrew Stubbs**, and Rene’ Garner of the MS Bar worked their collective magic and provided a top-notch ceremony for 196 newly admitted members. Speakers included Father Gerard Hurley, who gave the invocation; Jeff Styres, who spoke on behalf of the Board of Bar Admissions; Chancery Judge Patricia D. Wise who administered the oath to practice in the trial courts of Mississippi; Chief Justice William L. Waller, Jr., who administered the oath to practice before the Mississippi Supreme Court and Court of Appeals; Magistrate Judge Jane M. Virden, who administered the oath to practice in the U.S. District Court for the Northern District of Mississippi; District Judge Carlton W. Reeves, who administered the oath to practice in the U.S. District Court for the Southern District of Mississippi; Judge James E. Graves, Jr., who administered the oath for the U.S. Court of Appeals for the Fifth Circuit; and Hugh D. Keating, MS Bar President.

The Public Service Committee, chaired by **Jennie Pitts**, continues to make Wills for Heroes one of the signature projects of YLD. On September 22-23, 2011, the Public Service Committee and the Capital Area Bar Association brought the Wills for Heroes project to the Ridgeland Police Department. The Public Service Committee is currently scheduling events in Vicksburg, Tupelo, Biloxi, DeSoto County and Rankin County to be held between November 2011 and June 2012. If you are interested in volunteering and/or bringing the project to the first responders in your community, please contact Jennie Pitts at jpitts@cglawms.com.

Preparations for the High School Mock Trial Competition are well underway, thanks to this year’s chair, **Matt Eichelberger**. The case was posted on or before September 30, 2011, and team registration forms are due by Nov. 14, 2011.

Competition dates include Saturday, January 21, 2012, for the Jackson Regional; Saturday, January 28th for the Coast Regional; Saturday, February 4th for the Oxford Regional; and Friday and Saturday, February 17-18, 2012, for the Statewide Competition. Please join us in this fun and educational project – we always need attorney coaches and competition judges.

Look for updates on our other YLD Committees, including Child Advocacy, Disaster Legal Assistance, Diversity in the Law, and Publications in future columns. Also, be sure to keep an eye on Bar Briefs for more details regarding upcoming events commemorating the YLD’s 75th Anniversary! ■

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Fall 2011 New Admittees

Clifton Robert Agnew
Meghann Diane Ainsworth
Charles Julian Allen
Nelson Ernest Allen, Jr.
Timothy James Anzenberger
Jamie Carroll Arnold
Christina Wells Ashoo
Garth Runyon Backe
Simon Turner Bailey
Christopher Tyler Ball
Ja'Nekia Wa'Lexias Monique Barton
Bradley Christian Baskin
Kevin Brian Bass
Phillip Collins Bass
Jessica Lynn Bates
Blake Edrington Bell
Sue Ann Bernard
Michael Vincent Bernier
Paige Henderson Biglane
Hillary Matheny Blalock
Kristen NaJuana Blanchard
Phillip Matthew Blanchard II
Meredith Kate Blasingame
Mark Evans Bond
Grace Linnell Bonner
Jessica Nicole Bourne
Katherine Mary Bousquet
Kristen Elizabeth Boyden
Olivia Curl Brame
Angela Elizabeth Broun
David Ryan Bruhl
Stephen Michael Bryant
Ashley Carole Buckman
John Alan Buffington
Brooke Usher Bullard
Brian Kennedy Burns
Arthur Hugo Calderon
Leah Kathryn Campbell
Patrick Chase Carmody
Scott Edward Chabert
Michael Sean Collins
Thomas Orville Cooley
William Claude Coon
Jean Sherman Cooper
Steven Christopher Corhern
Michael Patrick Coury
Alexis Danielle Culver
Denis Joseph Damiens III
Hiram Richard Davis
Teyona Meshia' Davis
Kimberly McClung DeVries
Marielle Elisabet Dirx
William Dement Drinkwater
Steven Norman Eckert

Alexander Arthur Emplaincourt
Lindsey Dawn Etheridge
Alexis Louise Farmer
James Robert Ferguson
Jennifer Marler Frank
Cody William Gibson
Lindsey Joan Gilbert
Gary Michael Gleason, Jr.
Scott Lee Goldin
Aaron Marshall Graham
Christopher Sephern Green
Nicholas Tony Grillo
James Wallace Gunn III
Ka'Leya Quinae Hardin
James Griffith Harris
Matthew Lee Harris
Meaghan Erin Hill
Rachel Lee Hodges
Thomas Bradley Holley
David Christopher Holly
Daniel Allen Hossley
Richard Jackson Hughes
John Breckenridge Hunt IV
James Williams Janoush
Elissa Francis Ediri Johnson
Lucy Randolph Johnson
Bryan Allen Jones
Gina Ann Kelley
Kendrick Raytron Kennedy
Christopher Tyler Kent
Natalie Re'Lynn King
Charles Hunter Kitchens
Sam Dove Knowlton III
Thomas Joseph Koger
Paul Caleb Koonce
Kathryn Lynn Kyle
Heather Lynn Ladner
Benjamin G. Lambert
Brandon Allan Langford
Laura Elizabeth Lantzy
Joshua Craig Lawhorn
Joshua Alexander Leggett
Philip Martin Levy
Jeanne Marie Macksoud
Jamie Lynn Manley
John Prince Martin
David Scott Mays
Larry Darryl McCarty
Lauren Alexis McCarty
John Michael McCauley
Thomas Leland McCracken
April Leigh McDonald
John Mark McIntosh
Theodore James McKercher

Jordan Vinson McKibben
David McInnis McRae
Kimberly Shenise McSwain
Garrett Eugene Miller
Melvin David Miller II
Sarah Elizabeth Miller
Kiana Aaron Mitchell
Mitchell Dial Monsour, Jr.
Laura Michelle Moore
Stacey Renee Moore
Susanna Thornton Moore
Ronald Hershel Morris, Jr.
Katie Nicole Moulds
Anna Frances Murphy
Jessica Elizabeth Murray
Christopher Michael Myatt
James Edmund Myers, Sr.
Katrell Nash
William Lytle Nichol V
Lauren Wesley Oaks
Celeste G. O'Keeffe
Mitchell Lance Owen
Patrick Lance Pacific
Catoria Nichelle Parker
James Stephen Parks
James Walter Parrett, Jr.
Elizabeth Halsey Parrott
George Robert Parrott II
Hitenkumar Hasumukhlal Patel
James Jackson Patterson
Nancy Austin Patterson
John Andrew Payne
Edward Peebles Peacock IV
Karen Theresa Peairs
Stacy Everett Pepper
Molly Beth Poole
Megan Elizabeth Potts
Nancy Hollingsworth Powers
William Clark Purdie
Christopher Randall Purdum
Robert Ernest Quimby
Michael Ralph Rainwater
Aaron Randall Rice
Brian Patrick Richardson
Matthew Lance Roberts
Hawley Rae Robertson
Jordan Daniel Robinson
Casey Jones Rodgers
Sheri Tullos Rouse
Phillip Seth Rowland
Lakeita Faye Rox
Benjamin Rush, Jr.

Continued on next page

Fall 2011 New Admittees *continued*

Erin Diane Saltaformaggio
 Michael Saltaformaggio
 Shane Anthony Scott
 Dustin Michael Seanor
 Charli Chucobee Searcy
 Christina Maria Sequeira
 Thomas Andrew Shands, Jr.
 Tyler Bo Shandy
 James Matthew Simpson
 Angela Kyle Smith
 Courtney Bradford Smith
 Evelyn RaShae Smith

Thomas Peyton Smith
 Hal Scot Spragins, Jr.
 Francis Starr Springer
 Billy Edward Stage
 Peter Aaron Stokes
 Lindsey Elizabeth Surratt
 Michael Madison Taylor, Jr.
 Joshua Richard Thomas
 Benjamin Seth Thompson
 Brittney Pinkham Thompson
 Amy Spinks Tolliver
 Jared Keith Tomlinson

Alan Patrick Trapp
 Regina Triplett
 Brooke Michelle Trusty
 Horace Hunter Twiford IV
 Jason Paul Varnado
 Marni Lynn von Wilpert
 Joseph Paul Wallace
 Bridget Mae Warner
 Christopher Jackson Weldy
 Cory Michael Williamson
 Neal Carter Wise
 Mark Christopher Woods

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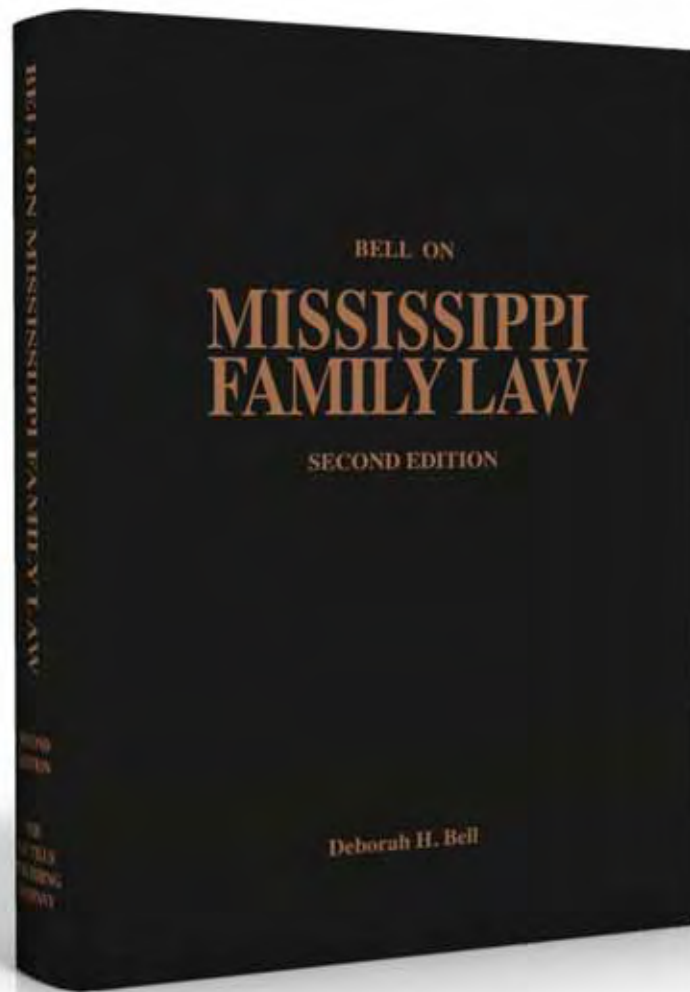
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We are pleased to announce the publication of the revised, expanded, updated 2nd edition of *Bell on Mississippi Family Law*. The 808-page treatise includes:

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- 200 additional pages
- 23 updated chapters, including Grounds for Divorce, Child Custody and Visitation, Alimony, Property Division, Pensions, Division of Businesses, Paternity, Jurisdiction and many more
- 3 new chapters on Domestic Violence, Nonmarital Partners and Assisted Reproduction
- An extensive, easy-to-navigate Table of Contents

TO ORDER

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Fall 2011 Bar Admissions Ceremony Sponsored by the Young Lawyers Division



Program participants administering the oath to practice law in Mississippi included (front row), Judge James E. Graves, Jr., representing the US Court of Appeals for the Fifth Circuit; Chief Justice William L. Waller, Jr., representing the Supreme Court; Judge Patricia D. Wise, representing Hinds County Chancery Court; Judge Jane M. Virden, representing the US District Courts for the Northern District of Mississippi; Judge Carlton W. Reeves, representing the US District Courts for the Southern District of Mississippi; (second row), Dean Richard Gershon, University of Mississippi Law School; Father Gerard Hurley, St. Paul Catholic Church; Jeff Styres, Member, Board of Bar Admissions; Jennifer G. Hall, President of the Young Lawyers Division of The Mississippi Bar; Hugh D. Keating, President of The Mississippi Bar; and Dean James H. Rosenblatt, Mississippi College School of Law.



The Fall Bar Admission Ceremony sponsored by the Young Lawyers Division was held Tuesday, September 28, 2010 at Thalia Mara Hall. Representing the Young Lawyers Division Bar Admission Ceremony Committee were (front row) Vicki Rundlett; Taylor Heck; Andrew Stubbs, chair; Jaklyn Wrigley; Mary Purvis; Lisa Gill; (back row) Brett Ferguson; Barbara Meeks; Jason Payne; Jennie Pitts; and Tiffany Graves.



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New “Lawyers in the Family”



Jessica N. Bourne, left, is welcomed by her father William Walker, Jr. of Jackson (admitted 1974).



Edward Peacock, IV, right, of Clarksdale is congratulated by his father Ed Peacock, III (admitted 1972).



George W. Murphy, left, of Ocean Springs (admitted 1977), greets his daughter Anna F. Murphy.



Judge Mike Taylor, left, of Brookhaven (admitted 1987), welcomes his son Madison Taylor, of Madison.



Stephen M. Bryant, right, is greeted by his brother Marcus C. Bryant, of Brandon (admitted 2009).



Rook Moore, right, of Holly Springs (admitted in 1966), congratulates his daughter Susanna Thornton Moore.



Tyler Shandy, left, of McComb is congratulated by his mother Dee Shandy, right, and his brother, center Robert Lenoir.



James Robert Ferguson, left, of Memphis, TN, is welcomed by his brother Brett Andrew Ferguson, of Brandon (admitted 2009).

New “Lawyers in the Family”



Patrick Pacific, left, of Laurel, is congratulated by his mother Jeannene T. Pacific (admitted 1973).



Robert Drinkwater, right, of Jackson (admitted 1977), greets his son William Drinkwater.



Charles Parrott, right, of Jackson, (admitted 1979), welcomes his son Robert Parrott.



Amy Tolliver, right, is greeted by her mother Diane Rushing Tanner, of Crystal Springs (admitted 2000).



Phillip M. Levy, left, of Jackson, is congratulated by his father Terry Levy (admitted 1977).



Jeffrey C. Smith, right, of Columbus (admitted 1979), greets his son Courtney B. Smith.



Catoria Parker, center, of Jackson is congratulated by her future father-in-law, Alexander Martin, left, of Hazlehurst (admitted in 1982) and her fiancé Alexander C. Martin II, right, of Jackson, (admitted 2010).



John Alan Buffington, center left, of Collins, is welcomed by his father Judge Larry Buffington, center right, of Collins (admitted 1980), his uncle B. Scott Buffington, left, of Magee (admitted 1973) and his cousin Phillip Buffington, far right, of Jackson (admitted 1984).

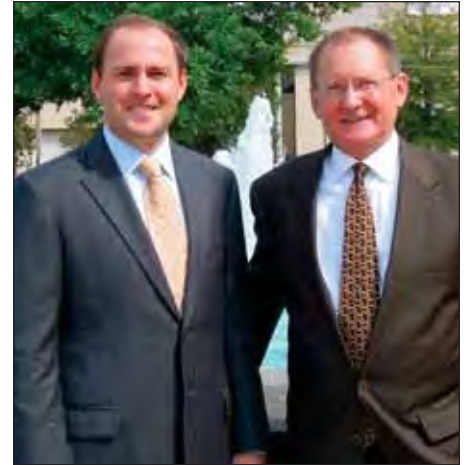
New “Lawyers in the Family”



Jason Goldin, left, of Gulfport (admitted 2009), welcomes his brother Scott Goldin.



Stacey R. Moore, left, is greeted by her father John R. Moore, (admitted 2009), both of Silver Spring, MD.



Richard Wise, right, of Jackson (admitted in 1975), congratulates his son Neal Wise.



Mitchell Owen, left, is welcomed by his father Joe Sam Owen of Gulfport (admitted 1972).



Alfred H. Rhodes, right, of Jackson (admitted 1974), greets his nephew Kevin B. Bass.



Will Janoush, center, of Madison, is congratulated by his cousin Tom Janoush, right, of Cleveland, (admitted 1993) and his uncle Jimbo Richardson, left, of Brandon, (admitted 1987).



Jack B. Weldy, of Hattiesburg (admitted 1962), welcomes his grandson Christopher J. Weldy, of Brandon.

Executive Director Larry Houchins Receives National Award for Outstanding Leadership



Pictured above is MB Executive Director Larry Houchins after receiving the 2011 Bolton Award for Outstanding Leadership. The award is presented annually by the National Association of Bar Executives in recognition of “exceptional professionalism and leadership.” Pictured with Houchins is Allan Head, the 2010 Bolton Award Recipient and Executive Director of the North Carolina Bar Association, and Carolyn Witt, NABE President and Executive Director of the New Haven (Connecticut) County Bar Association.

Legal History Committee Formed



Legal History Committee Formed - Photographed at the first meeting held of The Mississippi Bar's Legal History Committee were: Front row: Cham Trotter; Dick Bennett; Virginia Turnage; Mary Libby Payne; Judge Cynthia Brewer; Nichon Shannon; Chris Steiskal; Chuck Bearman; 2nd row: Gloria Kellum; Jeremy Litton; Reggie Blackledge; Van Williams; Gregg Mayer; Kelly McMullen; 3rd row: Gerald Collier; Lawrence Wade; Senator Lydia Chassaniol; Shirley Moore; Tangi Carter; 4th Row: Swan Yerger; Gov. William Winter; Carol West; Anne Webster; Rebecca Keith; Kristie Metcalfe; David Orlansky; 5th row: Damon Carpenter; Hugh Keating; John Robinson



Newest Addition to Bar Staff

Melissa Selman Martin
Deputy General Counsel

Melissa (“Missye”) Selman Martin has joined The Mississippi Bar as Deputy General Counsel. Missye evaluates and investigates Bar complaints, attorney incapacity matters, and reinstatement cases pursuant to the Rules of Discipline for the Mississippi State Bar, the Mississippi Rules of Professional Conduct and applicable statutes. In addition, Missye works with the Ethics Committee in developing opinions interpreting the Mississippi Rules of Professional Conduct and serves as the liaison between the Office of General Counsel and the Lawyers and Judges Assistance Program. She also assists General Counsel in litigated cases and performs other duties as necessary.

Prior to coming to the Bar, Missye was in private practice, most recently with her husband Drew as a member of Martin Law Firm, PLLC. She is an honor graduate of the University of Mississippi and the University of Mississippi School of Law. Missye has been active in her community serving in leadership positions with the Jackson Symphony League and the Junior League of Jackson.

Mississippi Volunteer Lawyers Project Reception for National Pro Bono Week October 25, 2011



Tiffany Graves, General Counsel for the Mississippi Volunteer Lawyers Project, and Justice James W. Kitchens



Cindy Mitchell, Chair of the MVLP Board; Justice Ann H. Lamar; and Justice George C. Carlson, Jr.



MS Supreme Court Chief Justice William L. Waller, Jr. and Gee Ogletree



Receiving awards for being Pro Bono Volunteers were Denita Smith and Gayla Carpenter-Sanders



Steve Rosenblatt and John McCullough



Justice Randy G. Pierce; Joy Lambert Phillips, Annual Campaign Co-Chair; and MS College Law School Dean Jim Rosenblatt



MS Bar President Hugh Keating, MVLP Executive Director Shirley Williams, and Pro Bono Volunteer Award recipient Mark A. Chinn



Pro Bono Volunteer Award recipient Debbie Bell and Joy Lambert Phillips

MS Access to Justice Commission Executive Director Davetta Lee and MATJ Commission Co-Chair Judge Denise Owens



Pro Bono Volunteer Award recipient Robert Williamson, pictured center, with Dot and Briggs Smith



Judge James Graves and La'Verne Edney



Heather Wagner and Marcie Fike Baria



Seale Pylate and Debra Brown



Tiffany Graves and Judge Carlton Reeves

The 3rd Annual MVLP reception was held at the Bar Center.



Welcoming the 106th President of The Mississippi Bar



Hugh D. Keating
Gulfport, Mississippi

“**A** lawyer’s time and advice are his [her] stock in trade.” Those words spoken by Abraham Lincoln over 150 years ago are equally true today. Our product is a service. The quality of our product and how we deliver it is predicated on *time*.

In relation to *time*, in your professional life how many times have you asked yourself, “I wish I had more *time*?” . . .

- . . . more *time* for preparation of your client to withstand cross-examination,
- . . . more *time* to perfect your brief on appeal,
- . . . more *time* to conduct due diligence for a sale, purchase or lease transaction,
- . . . more *time* to reflect on the facts and issues of a complex case or other matters related to your practice, or
- . . . more *time* to devote to the Mississippi Volunteer Lawyers Project.

In relation to *time* in your private life,

- . . . more *time* to take your kids or grandkids hunting or fishing,
- . . . more *time* to attend their sporting events,
- . . . more *time* to take your spouse or significant other out on a date,
- . . . more *time* to spend with parents, whose years are advancing,
- . . . more *time* to develop a spiritual dimension in your life, or
- . . . more *time* to work with community non-profit organizations;

More *time*, . . . more *time*, . . . if only I had more *time*! Do we need more *time* to produce more revenues? Or, do we need more *time* to devote to our personal and community well-being. These questions are in constant conflict.

Continued on next page

MVLP Celebrates “National Pro Bono Week” and Welcomes Its New General Counsel, Tiffany M. Graves

Throughout the entire month of October, the Mississippi Volunteer Lawyers Project celebrated “National Pro Bono Week”, a coordinated national effort to meet the ever-growing needs of the country’s most vulnerable citizens by encouraging and supporting local efforts to expand the delivery of pro bono legal services. On October 6, 18 and 19, MVLP hosted CLE sessions and legal clinics in Oxford, McComb and Jackson, respectively. On October 25, the Project held a “Hot Topics” Seminar at law firm of Wise Carter Child & Caraway P.A. in Jackson free of charge to lawyers interested in handling pro bono cases. The organization ended the month of activities with a Pro Bono Awards Reception on October 25 to thank legal professionals for outstanding pro bono support and service. The Justices of the Mississippi Supreme Court were among those honored at the annual event. As part of the Awards Reception, MVLP announced its fundraising campaign, “Advancing Justice, Restoring Hope.” The organization hopes to raise \$100,000 to increase the number of volunteer lawyers statewide, boost the number of legal clinics offered, ensure small fees to not impede legal actions and support other MVLP operations. Former Mississippi Bar



President Joy Lambert Phillips and MVLP’s Immediate Past General Counsel, La’Verne Edney, are leading the fundraising effort.

On October 3, MVLP welcomed Tiffany M. Graves as its new General Counsel. Tiffany began her legal career as the Lewis F. Powell Fellow at the Mississippi Center for Justice where she focused on juvenile justice, children’s mental health and education issues. She was a Litigation Associate for two Jackson defense firms after completing her fellow-

ship. She is President-Elect of the Jackson Young Lawyers Association, Chair of the Child Advocacy Committee of the Young Lawyers Division of the Mississippi Bar, a member of the Board of Directors of the Capital Area Bar Association and a member of the Women’s Auxiliary of Mississippi Children’s Home Services. Before joining MVLP, she handled a number of pro bono cases for the organization. Upon meeting with Ms. Graves, MVLP’s Executive Director, Shirley Williams, said, “I quickly determined that she exemplifies the true passion and commitment of her Oath in her desire to meet the needs of the defenseless. This passion will certainly strengthen the delivery of legal services to the poor, and what better time than during the National Celebration of Pro Bono to welcome such a wonderful advocate to MVLP!”

MVLP, a joint project of The Mississippi Bar and Legal Services Program, provides high quality pro bono legal assistance and access to justice to Mississippians of limited means who would not otherwise have access to courts. The project started in 1982 and represents the nation’s first formal association of a state Bar and representatives of the Legal Services Corporation. ■

2011 Honorees

Special Recognition

Justices of the Mississippi
Supreme Court

Attorneys

John Anderson, Private Practitioner
Professor Deborah H. Bell, University
of Mississippi School of Law
Gayla Carpenter-Sanders,
Wells Marble & Hurst, PLLC
Mark A. Chinn,
Chinn and Associates, PLLC
Courtney Cockrell, Morgan & Morgan
La’Verne Edney, Baker Donelson
Bearman Caldwell & Berkowitz, PC
Powell “Gee” Ogletree, Jr.,
Adams and Reese, LLP
Kenya Rachal, Baker Donelson
Bearman Caldwell & Berkowitz, PC

Denita Smith, Private Practitioner

Vangela Wade,
The Wade Law Firm, PLLC

Robert Williamson,
Baria-Williamson, PLLC

Chancellor Marie Wilson,
9th Chancery District of Mississippi

Legal Organization

University of Mississippi
Pro Bono Program
Directed by Professor Deborah H. Bell

Law Students from Mississippi College School of Law

Tchanavia Bryant
Frank Leli
Mallory Miller
Kate Morgan

Pacesetter Annual Campaign Contributors

Kryptonite - Super Hero (\$5,000 and more)

W. Steve Bozeman
Baker Donelson Bearman Caldwell &
Berkowitz, PC
Butler, Snow, O’Mara, Stevens &
Cannada, PLLC
Phelps Dunbar, PLLC
Watkin Ludlam/Jones Walker
Titanium (\$2,500 - \$4,999)
Wise Carter Child & Caraway, PA
Cynthia Mitchell
Joy & Frank Phillips

Platinum (\$1,000 - \$2,499)

Harry Allen
Donna Brown Jacobs
Luther and Virginia Munford
Stephen W. Rosenblatt
Gold (\$500 - \$999)
Shannon Clark
Sid Davis
Elliott Andalman & Martha Bergmark
Jimmy Wilkins
Mockbee Hall & Drake, PA

Silver (\$250 - \$499)

Lewis H. Burke
Beau Cole
F. Douglas Montague, III
Ginny Pitts
Lindia P. Robinson
Pablo & Shirley Williams

Bronze (\$50 - \$249)

Amanda Green Alexander
Cathy Beeding
Pamela Burns
David Cobb
M. Ronald Doleac
Shondra Dotson
James & Tiffany Graves
Glover Young Walton & Simmons PLLC
Mr. & Mrs. George Fair
Dorene Harper
Corey Hinshaw
Larry Houchins
Kimberly Johnson
Lamar & Hannaford, PA
Paul Neville
Dean Jim Rosenblatt
Briggs Smith

Martha Bergmark Honored by the White House



Mississippi Center for Justice's founding president and CEO Martha Bergmark, pictured second from left, was honored as a Champion of Change as part of President Barack Obama's Winning the Future Initiative during a ceremony in October. She participated in a roundtable discussion including other honorees, United States Attorney General Eric Holder, Senior Counselor for Access to Justice Mark Childress and other White House representatives.

"I was honored to be a part of the Champions of Change and join a discussion at the White House with other public interest lawyers who have dedicated their lives to closing the justice gap in America. Our discussion was wide-ranging and fruitful, focusing on the role of the legal profession in shaping political discourse and public policy in our nation.

One issue that often strikes me while discussing these issues is that it has been more than half a century since the civil rights movement and our work is not yet done.

During the civil rights movement, a generation of lawyers and advocates came to Mississippi from across America to lend their time and talent to the heroic struggle for equality. It made an indelible impact on our nation's laws, politics and culture. We have become a more fair and just nation because of it.

But the truth is, while Mississippi was at the heart of the movement, its promises were never fully realized. Mississippi

remains a state where racism and inequality are a fact of life. It is still mired in poverty and registers at the bottom of nearly every national measure of well-being. This is the reason why the Mississippi Center for Justice was created as a non-profit, public interest law firm. And it's the reason I continue our work today.

While it is no secret that a disproportionate number of our nation's most vulnerable citizens live in our state, we are not unique. Nationwide, the economic crisis has dramatically increased the number of people threatened with or harmed by foreclosures, evictions, unemployment, inadequate schools and no access to medical care.

Nor is Mississippi unique in its need for advocates who can fight for policies and programs that make it possible for disadvantaged people to gain access to justice. In Mississippi, we recently won a suit that restored \$132 million in Hurricane Katrina-related aid to low-income and minority homeowners who were unjustly

denied help repairing or rebuilding homes. But natural disasters are not even close to the primary threat to housing. The number of Americans who may lose their homes to foreclosure remains at record levels in our state and across the nation. All of these Americans – from all walks of life – deserve protection, justice and a roof over their heads.

Today, lawyers in Mississippi and across America are working to advance justice for low-income and minority citizens in healthcare, racial discrimination, unfair lending practices and a spectrum of other issues. Whether they work in privately-funded organizations like mine, in federally funded legal services programs, or in law firms that have generously provided free legal assistance to thousands of people in need – they deserve our support.

How America responds to the crisis facing our justice system is a measure of our worth as a nation and as human beings." ■



Bar Volunteers Meeti



Bench Bar Committee



Bench Bar Committee



Ethics Committee



LJAP Committee



LJAP Committee



Military Committee



Professionalism Committee



Public Information Committee

ng on Committee Day_____



Public Information Committee



Technology Committee



Technology Committee



UPL Committee



UPL Committee



Women in the Profession Committee



Women in the Profession Committee



Women in the Profession Committee

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Robert Hartwell Bowling

Robert Hartwell Bowling, 95, of Ridgeland, died February 24, 2011. A graduate of Mississippi College School of Law, he was admitted to practice in 1954. He enlisted in the U.S. Army Air Corps in 1937 and served in the U.S. Air Force until 1949. In World War II he was pilot of a B17, flying 300 combat hours over North Africa with the Fifteenth Squadron of the Third Photo Reconnaissance Group under the command of Elliot Roosevelt, son of the then sitting U.S. President. After serving overseas, he was assigned to the Air Inspector's Office in the Pentagon. He continued flying throughout his life. After leaving the military he was an insurance claims executive for Southern Farm Bureau Casualty Insurance Company for thirty years retiring in 1980. At the time of his retirement he was made an honorary member of the Louisiana State Legislature. He was an elder of the Presbyterian Church and an active member of Briarwood Presbyterian Church at the time of his death. He was a former member of the Kiwanis Club.

Cary Egbert Bufkin

Cary Egbert Bufkin, 82, of Jackson, died August 29, 2011. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1952. After college, Cary was commissioned into the Army as a 1st Lieutenant. He served from 1952-1955 in the Korean Conflict. He remained in the Active Reserve for the next 30 years, retiring as a Colonel. In 1955, he joined the firm of Satterfield, Shell, Williams, and Buford, later Shell, Buford, Bufkin, Callicutt and Perry, where he was a partner for the next 45 years. In 2000, he joined Wise, Carter, Child and Caraway" until retirement in 2010. Cary served as President of the Hinds County Bar and on The Mississippi Bar's Health Law Section. He was a member of the Federal and American Bar Associations, the Mississippi Defense Lawyers Association, the American Health Lawyers Association, the American Society of Law, Medicine and Ethics, the American Society of Writers of Legal Subjects, the Mississippi Claims Association, the Federation of Insurance and Corporate Counsel, the Judge Advocates Association, the International Association of Defense Counsel and the American Judicature Society. He served as Editor of the Mississippi Lawyers Association Journal from 1966 to 1967 and as President from 1969 to 1970. He was awarded the Life Time Achievement Award from the Mississippi Defense Lawyers Association in 2007. He was a member of First Baptist Church in Jackson.

James W. Burgoon Jr.

James W. Burgoon Jr., 75, of Greenwood, died October 23, 2010. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1966.

Noel Peter Giuffrida

Noel Peter Giuffrida, 79, of Ridgeland, died May 15, 2011. A graduate of Tulane Law School, he was admitted to practice in 1973.

Joe Clifton Griffin

Joe Clifton Griffin, 69, of Ackerman, died August 14, 2011. A graduate of Mississippi College School of Law, he was admitted to practice in 1979. He had a private practice in Ackerman for 31 years and also served as the attorney for the Towns of Mathiston, and Ackerman. He served as the attorney for the Board of Supervisors of Choctaw County, the last year of service also being elected by his peers to serve as President of the Mississippi Association of County Board Attorneys. After closing his private practice he was appointed by the Chancery Court to the position of Youth Court Referee for Choctaw County. Joe was an devoted member of the Ackerman United Methodist Church where he served in many capacities - Sunday School teacher, choir member, Lay Leader, Chairman of the Administrative Board and Chairman of the Finance Committee. He was also active in the community where he had been a member of the Rotary Club and was a past president.

William L. Griffin Jr.

William L. Griffin Jr., 61, of Tupelo, died August 28, 2011. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1975. Bill was a proud 30-year friend of Bill W. He was a member of Christ United Methodist Church in Blackland.

George Thomas Kelly Jr.

George Thomas Kelly Jr., 64, of Greenville, died April 17, 2011. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1974.

Martin A Kilpatrick

Martin A Kilpatrick, 67, of Greenville, died September 5, 2011. A graduate of the University of Mississippi School of Law, she was admitted to practice in 1968.

Dunnica Ott Lampton

Dunnica Ott Lampton, 60, of Jackson, died August 17, 2011. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1975. In 1976, served as the McComb City Prosecutor and Assistant District Attorney for the Fourteenth Circuit Court District. Beginning in 1981, Lampton served as the District Attorney for the Fourteenth District. He won election as District Attorney on five occasions and diligently served the people of the Fourteenth District until 2001. In 2001, President George W. Bush appointed Lampton to serve as United States Attorney for the Southern District of Mississippi, where he served until 2009. Lampton also served in the Mississippi National Guard from 1980 until 2004. He ultimately served as Command Staff Judge Advocate for the Mississippi National Guard and retired with the rank of Brigadier General.

IN MEMORIAM

Frank B. Liebling

Frank B. Liebling, 62, of Tupelo, died September 1, 2011. A graduate of Mississippi College School of Law, he was admitted to practice in 1974. He played football at the University of Mississippi. While receiving his Masters of Accountancy from the University of Oklahoma, he served as an assistant under Coach Barry Switzer. He also received a German law degree from the University of Heidelberg, Germany. He was practicing law in Tupelo and Columbus. He was a veteran of Vietnam, serving in the US Marine Corps. He attended New Covenant Baptist Church.

William B. Lovett Jr.

William B. Lovett Jr., 48, of Jackson, died March 2, 2011. A graduate of Mississippi College School of Law, he was admitted to practice in 2001. Lovett was a classical producer and on-air host at Mississippi Public Radio from its inception in 1985 until 1998. Lovett clerked for the Honorable William H. Barbour at the United States District court for the Southern District of Mississippi, thereafter joining the law firm of Wise Carter Child & Caraway. Lovett was a shareholder at the time of his death, practicing in the railroad and utility litigation sections.

Lyle M. Page

Lyle M. Page, 79, of Biloxi, died July 22, 2011. A graduate of Tulane Law School, he was admitted to practice in 1954. He was a founding member of the law firm of Page, Mannino, Peresich and McDermott. He was associated with the Peoples Bank for over 30 years as a director and advisory director and as a director of the Peoples Financial Holding Company. He was an active member of the Episcopal Church of The Redeemer where he served on the vestry many years, including two terms as Senior Warden. He was past Chairman of the Board of Gulf Coast Carnival Association and was King D'Iberville in 1993. He was also a member, past king and president of Mithras Carnival Association. He practiced law in Biloxi for 57 years. He was a member of the Biloxi Bar Association, Harrison County Bar Association, Member, and president in 1961, of the American Bar Association, member of the Louisiana State Bar Association, and Member of the National Association of Bond Lawyers. He served as Prosecuting Attorney for the City of Biloxi from 1961 till 1971, Attorney for the City of Biloxi Planning Commission from 1961 till 1971, and the City Attorney for the City of Biloxi from 1971 till 1973. He was an active member of the Biloxi Regional Medical Center Board of Directors, past president of the Biloxi Jaycees, past president of the Biloxi Chamber of Commerce, and past president of Howard Memorial Hospital Board. He served on the Board of Trustees of the Mississippi Gulf Coast Community College from 1963 till 1966. He established and was trustee for the Bleuer Scholarship Fund.

Margaret H. Redmond

Margaret H. Redmond, 65 of Jackson, died August 12, 2011. A graduate of the University of Mississippi School of Law, she was admitted to practice in 1981.

Billy Wyte Shelton

Billy Wyte Shelton, 79, of Saltillo, died August 15, 2011. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1959. Shelton was a longtime partner in the Shelton and Associates Law Firm in Tupelo, having practiced law for over 50 years. A veteran of the U.S. Army with service in the Korean War, Shelton served as an airborne ranger and armor officer as well as instructor in the Armor School and Command and General Staff College. He retired from the military after 34 years with the rank of Lt. Colonel. Shelton served four years in the Mississippi House of Representatives and was Lee County Prosecuting Attorney for four years. He and his wife, Ruth, were the founders of the Tupelo-Lee Humane Society and Spay Inc. He was a longtime member of the East Heights Baptist Church. Shelton was a former deacon and Sunday school teacher. He later in life attended the Birmingham Ridge Baptist Church. He was 32nd degree Mason and Shriner, a member of the American Legion, Am-Vets and the Lee County and American Bar Associations.

John W Shelton

John W Shelton, 68, of West Palm Beach, FL, died August 5, 2011. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1966.

Billy Henry Stephens

Billy Henry Stephens, 70, of Brandon, died November 3, 2011. A graduate of Mississippi College School of Law, he was admitted to practice in 1965.

Hugh W. Tedder Jr.

Hugh W. Tedder Jr., 54, of Jackson, died February 27, 2011. A graduate of Tulane Law School, he was admitted to practice in 1981. He was a practicing attorney for 30 years. He was employed by the Mississippi Attorney General's Office as a prosecutor in the Medicaid Fraud Control Unit. Hugh was an active member of Broadmeadow United Methodist Church. He was a long time member of the Bar's Technology Committee and also served as Chairman. Tedder was a member of the Kappa Alpha Order and an Eagle Scout.

Christopher W. Webster

Christopher W. Webster, 48, of Washington, D.C., died July 20, 2011. A graduate of the University of Mississippi School of Law, he was admitted to practice in 1992. Webster had more than 20 years experience in the political and private sectors. His political involvement began in 1985, as special assistant to U.S. Sen. John C. Stennis, president pro tempore of the United States Senate. After graduating from law school, he served as chief legal counsel to Mississippi Gov. Kirk Fordice. During this time he drafted the gambling law allowing the Choctaw Indians to build casinos on waterways. From 1993 to 1995 he served as executive director of the Mississippi Republican Party, and in 1995 founded the First Mississippi Capital Corp. in Jackson, MS.

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The screenshot shows an iPad interface with a note titled "1 Note" containing a search bar and a red-circled link "FormsPass Special Promotion". To the right, a table titled "FormsPass Special Promotions" displays pricing for different numbers of attorneys. The table includes columns for "Number of Attorneys", "Current Annual Price", "Special Annual Price", and "Savings". The date "Apr 4 3:56 PM" is shown in the top right of the table area. A virtual keyboard is visible at the bottom of the screen.

Number of Attorneys	Current Annual Price	Special Annual Price	Savings
Solo	\$195	\$195	-0-
Two	\$295	\$195	\$100
Three	\$395	\$195	\$200
Four	\$495	\$195	\$300
Five	\$595	\$195	\$400
Six-Ten	\$695	\$295	\$400
Eleven+	\$1,095	\$395	\$600



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CLE Calendar of Events

The following live programs have been approved by the Mississippi Commission on Continuing Legal Education. This list is not all-inclusive. For information regarding other programs, including teleconferences and online programs, contact Tracy Graves, CLE Administrator at (601) 576-4622 or 1-800-441-8724, or check out our website, www.mssc.state.ms.us Mississippi now approves **online programs** for CLE credit. For a list of approved courses, check the Calendar of Events on our website. For information on the approval process for these programs, please see Regulations 3.3 and 4.10 posted under the CLE Rules on our website or contact Tracy Graves at the numbers listed above.

DECEMBER

- 2 Federal Public Defender Northern and Southern District of MS "2011 CJA Training." 6.5 credits (includes ethics). Jackson, MS, North Tower of City Center. Contact 601-948-4284, Angela McRae.
- 2 HalfMoon LLC "MS Land Laws." 6.0 credits. Jackson, MS. Contact 715-835-8900.
- 5-6 UM CLE "CLE by the Hour." 12.0 credits (includes 2.0 ethics). Memphis, TN, Memphis Hilton. Contact 662-915-7232.
- 9 NBI "Trusts 101." 6.7 credits (includes ethics). Jackson, MS, Jackson Convention Complex. Contact 715-835-8525.
- 13 WestLaw "WestLawNext." 1.0 credits. Jackson, MS, Forman Perry Law Firm. Contact 713-403-1183, Riv Yadin.
- 14 MS Volunteer Lawyers Project "Family Law Legal Clinic." 4.0 credits. Greenville, MS, Washington County Chancery Court. Contact 601-960-9577, Tiffany Graves.
- 15 MS Bankruptcy Conference "31st Annual Seminar of the MS Bankruptcy Conference." 13.0 credits (includes ethics). Jackson, MS, Jackson Hilton. Contact 601-955-7017, Charlene Kennedy.
- 16 Barristers Educational Services "Recent Developments in TN Law." 6.0 credits (includes ethics). Memphis, TN. Contact 1-800-874-8556, Sarah Middleton.
- 29 Barristers Educational Services "Recent Developments in AL Law." 6.0 credits (includes ethics). Mobile, AL. Contact 1-800-874-8556, Sarah Middleton.
- 30 Barristers Educational Services "Evidence in Trial Practice." 6.0 credits (includes ethics). Memphis, TN. Contact 1-800-874-8556, Sarah Middleton.

JANUARY

- 18 MS School Boards Association "Education Employment Procedures Law, Non-Renewals." 3.0 credits. Raymond, MS, Eagle Ridge Conference Center. Contact 601-924-2001, April Mills.
 - 24 Capital Area Bar Association "Panel Discussion on Judicial Pay Raise in MS." 1.0 credits. Jackson, MS, Capitol Club. Contact 601-991-2000, Tiffany Grove.
 - 26 UM CLE "Winter MS Municipal Attorneys' CLE Seminar." 6.0 credits (includes ethics). Jackson, MS, Hilton Hotel. Contact 662-915-7232.
 - 26 Sterling Education Services, Inc. "Family Law Update." 7.1 credits (includes ethics). Jackson, MS. Contact 715-855-0495.
 - 27 UM CLE "Social Security Disability Law." 6.0 credits (includes ethics). Ridgeland, MS, Embassy Suites. Contact 662-915-7232.
 - 27 MC School of Law "Litigating the Trucking Case." 6.0 credits (includes ethics). Jackson, MS, MC School of Law." Contact 601-925-7107, Tammy Upton.
 - 27 NBI "Managing Liens & Subrogation in Auto Accident Litigation." 6.0 credits (includes ethics). Jackson, MS, Jackson Convention Complex. Contact 715-835-8525.
- ## FEBRUARY
- 7 NBI "Road & Access Law: Researching & Resolving Common Disputes." 6.0 credits. Jackson, MS, Hilton Garden Inn Jackson Downtown. Contact 715-835-8525.
 - 10 UM CLE "18th Annual Mid-South Conference on Bankruptcy Law." 6.0 credits (includes ethics). Memphis, TN, Memphis Hilton. Contact 662-915-7232.

- 10 MC School of Law "Guardian Ad Litem." 6.0 credits (includes ethics). Jackson, MS, MC School of Law." Contact 601-925-7107, Tammy Upton.
- 10 E. Farish Percy "Summary of Recent MS Law." Oxford, MS, The Inn at Ole Miss. Contact 662-832-8605, E. Farish Percy.
- 24 UM CLE "19TH Annual Evelyn Gandy Lecture Series." 6.0 credits (includes ethics). Memphis, TN, Peabody Hotel. Contact 662-915-7232.
- 24 MC School of Law "Law Review Symposium: Social Media." 3.0 credits (includes ethics). Jackson, MS, MC School of Law. Contact 601-925-7107, Tammy Upton.
- 24 E. Farish Percy "Summary of Recent MS Law." Biloxi, MS, Imperial Palace Hotel & Casino. Contact 662-832-8605, E. Farish Percy.

MARCH

- 2 UM CLE "12th Annual Guardian Ad Litem Certification CLE." 6.0 credits (includes ethics). Ridgeland, MS, Embassy Suites. Contact 662-915-7232.
- 2 E. Farish Percy "Summary of Recent MS Law." Jackson, MS, Jackson Convention Complex. Contact 662-832-8605, E. Farish Percy.
- 7 MS School Boards Association "Fair Labor Standards Act, Workers' Comp & FMLA." 3.0 credits. Ridgeland, MS, Embassy Suites. Contact 601-924-2001, April Mills.
- 8 Lorman Business Center "Current Issues in Storm Water Regulation." 6.0 credits. Gulfport, MS. Contact 715-833-3940.
- 23 MC School of Law "Mediation Conference." 6.0 credits (includes ethics). Jackson, MS, MC School of Law." Contact 601-925-7107, Tammy Upton.

Welcoming the 106th President of The Mississippi Bar

There are occasions when we find ourselves exasperated over the lack of that precious commodity called *time*; exasperated to the point of experiencing effects of the law of diminishing marginal utility. At that point we are exposed to the danger of losing our balance, losing our ability to effectively manage our schedules, losing control over our priorities between our professional and private lives, and, worse yet, of losing our ethical and moral compass.

Should “*time*” become your enemy and cause you to consider conduct which may be out of character and unacceptable, take heart - you have a safety net. The Mississippi Bar has a wide variety of programs essential to our professional growth and development, but there is no program more important than our Lawyers and Judges Assistance Program (LJAP) directed by Chip Glaze. LJAP is in the business of saving the careers, families and lives of our membership and law students. It exists to assist us in the restoration of balance and reestablishment of priorities necessary to the successful practice of law.

After taking the oath administered by Chief Justice William L. Waller, Jr., I have been asked on numerous occasions . . . “how do you find *time* to do it?” My response is the responsibilities are *manageable* and *worthwhile*. *Manageable* because of several support groups:

- (1) the leadership and staff that our executive director, Larry Houchins, has assembled into a well-oiled machine for purposes of fulfilling the mission of this organization;
- (2) President -Elect Lem Adams, our Board of Commissioners, the attorneys who serve on our Committees, Sections and in our Foundation;
- (3) a fantastic group of partners, associates and staff at Dukes, Dukes, Keating & Faneca, P.A.; and, most importantly,
- (4) an understanding and engaged wife and family.

Without one of these, *time* management would be seriously impaired.

As I reflect on these support groups, I am in awe of the outstanding leadership exhibited by my predecessors, many of

whom had solo or small firm practices. In particular, the leadership of one of my mentors and friend, Nina Stubblefield Tollison. Nina made “*time*” work for us. Our organization created two new programs during her tenure. The Bar Leadership Program, building leaders for the future, and the Lawyer Citizenship Awards program . . . an opportunity to recognize our members who improve the quality of life in our communities without expectations in return. Both programs enhance the image of our profession, as well as the interests of our membership.

Undertaking the responsibilities of office are *worthwhile* for many reasons, including the opportunity to learn about and address the needs and opportunities related to our profession, to build new relationships and to give back to a profession that has given, and continues to give, so much to so many. The opportunity to serve as your president is a privilege and gift for which I am deeply and continuously humbled.

Earlier I mentioned the Mississippi Volunteer Lawyers Project (MVLV). Having recently attended a pro bono clinic sponsored by MVLV and having observed the energy and efficiency of its general counsel, Tiffany Graves, and staff headed by Shirley Williams, I am inspired to promote a call to action within our membership. The work of MVLV, through the generous contributions of “*time*” and talents by our members, has a profound impact in bridging gaps in access to justice. The MVLV, in conjunction with the efforts and programs of the Access to Justice Commission chaired by Judge Denise Owens and H. Rodger Wilder, provides an opportunity for our members to reduce cynicism about our profession. Former governor William F. Winter recognized this opportunity in his commencement address to the University of Mississippi Law School in August, 1978, and as set out in his book, *The Measure of our Days*, pages 62-63, when he stated . . .

. . . If we are to reduce the cynicism which exists about our profession, we shall do so only by the example of our performance. This is a performance that extends to the privilege of providing wise and unselfish leadership

in the solving of the problems of our community, our state and our nation. We must remember that **it will not be enough that we are good lawyers. We must also be good citizens.** So while we work to improve our profession from within, we also must understand that **we have an inescapable duty to our profession and to our society to make life more humane and more decent for our fellow man.** (Emphasis added)

Governor Winter’s words emphasized the need for our profession to devote more *time* to assisting those who experience challenges in obtaining access to justice. The MVLV affords us a wonderful opportunity to fulfill that responsibility. Alternatively, in the event *time* is too scarce to become personally engaged, perhaps we could consider doing more than just the minimum contribution set forth in MRPC Rule 6.1. Throughout the year, the Access to Justice Commission will be conducting a capital campaign chaired by LaVerne Edny and Joy Lambert Phillips to help close deficits created by funding cutbacks in today’s economic environment. The campaign is off to a good start, but sure could use your help.

Now, as I realize I have only a limited *time* to hold your attention, please allow me to address one more subject of critical import - the need for pay alignment for our judges and prosecutors. When one analyzes the intangible, but measurable costs in terms of lost *time* and access to justice caused by the extraordinarily high attrition rate of our judiciary, it leads to the inescapable conclusion that we are falling short in our charge “to make life more humane and more decent for our fellow man.” Hence, it is imperative that we, as officers of the court, bound by our duty to promote access to justice, take the initiative to educate our legislature about the adverse consequences of inaction. We must take the *time* to do our part. If not us, who? If not now, when?

Finally, I encourage you to find *time* to cultivate balance in your professional and personal life so that you may experience the entirety of the blessings of our profession. ■

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LAWYERS HELPING LAWYERS

An Interview With Chip Glaze

Program Director Of LJAP

MS Lawyer – Tell us about yourself

Glaze - I am a licensed attorney, therapist, husband, father and a grateful recovering alcoholic. Also, I have the greatest job in the world. I am the Program Director for The Mississippi Bar Lawyers and Judges Assistance Program.

MS Lawyer - How does your background help you to achieve results?

Glaze - There is no doubt that my own continuing recovery has as much to do with why I serve in this position as any of my other credentials.

Of course, I wasn't always "in recovery"; I spent years, beginning in my late teens, in throws of active addiction to alcohol. On June 7, 1998, at the age of 28, I "came to" realizing, not for the first time, that my drinking was out of control and I should stop. On that day, however, something was different and for the first time, I made the decision; I would stop. I am so grateful to report that since that date I have not had a drink. That being said, for me and for the majority of recovering alcoholics I know with long term sobriety, meaningful recovery has been a very different proposition from mere abstinence. With varying degrees of willingness, effort, and acceptance, I have been blessed with a measure of "success" in recovery.

This is not to say that things have always been easy. I have faced some of the most difficult circumstances of my life in recovery. The break-up of my first marriage, the death of family members, serious financial insecurity, and significant career struggles have all been a part of the last 13+ years of my life. I've stayed sober, but I haven't always been healthy. At times, I've suffered in serious depression and anxiety and dealt with horrible dysfunction in all types of relationships. I do not say these things to offend or scare, or to seek sympathy or admiration. I say them because they are true. These things are part of my personal recovery, part of my story, and part of why I am here.

Just as it hasn't always been easy or happy, it certainly hasn't all been bad. In fact, a good deal of it has been phenomenally good. Today, I am blessed to have a won-

derful wife, and my sons are three of the finest young men in this world. I have the honor and privilege to serve as the LJAP director. Further, I work daily alongside a community of volunteers who never cease to amaze in their dedication to serving their fellows. I treasure knowing and serving with these incredible men and women. My life now centers on recovery, gratitude, healthy relationships, and service to those who, like me, at times struggle to find their way in this life. I never do this recovery thing perfectly, but as *The Big Book of Alcoholics Anonymous* says, "we claim spiritual progress, not perfection."

The foregoing condensed version of my story is not unlike those of most of the attorneys, judges, and law students who find their way into LJAP. Certainly the facts and circumstances vary widely, but many of the themes are consistent: fear, feelings of inadequacy/inferiority, depression and anxiety, addiction; isolation. It is for these reasons we have LJAP. Studies show that lawyers suffer impairment from addiction and/or other mental and emotional disorders at a rate roughly twice that of the general population. Two lawyers in ten are dealing with impairment issues, which means that our entire profession is dealing with them as a whole. That's why LJAP here.

MS Lawyer - What does LJAP do?

Glaze - LJAP is here to:

- provide education and resources about impairment, particularly as manifested in the practice of law, and
- offer assessment, consultation, and referral services to attorneys in need of assistance, and
- provide follow up and in some cases monitoring services as attorneys enter a life of recovery, and
- provide a confidential community where attorneys can find support, feedback, accountability and confrontation in safe environments, including Lawyers in Recovery 12-Step Meetings and therapist-facilitated support groups in several areas (more to come).

The services of the LJAP are **voluntary**, **confidential**, and available at **no charge** to

all attorneys, judges, law students and law school graduates in Mississippi.

Is it really confidential?

Glaze – Absolutely. No one involved with LJAP shares any information about clients unless/until specifically authorized to do so by that client.

How can an impaired attorney or concerned family, friends, or employers use you to help?

Glaze - I can be reached in my office at 601.948.4475, on my cell at 601.201.0577, or by email at cglaze@msbar.org. If someone prefers they could contact Carolyn Barrett, LJAP's Office Administrator & Monitoring Coordinator at 601.948.0989 or by email at cbarrett@msbar.org. Personal inquiries can also be made through LJAP volunteers in your area, and our website (soon to be revised) is http://www.msbar.org/lawyers_assist.php

MS Lawyer – Who Should Call LJAP?

Glaze - If you believe that you or someone you know needs assistance, you should call. If an attorney or judge in your community appears to be having problems, you should call. If you're concerned, but not sure, you should call. If you have a general question related to impairment, you should call. It's YOUR LJAP, and we look forward to being of service.

Henry M. "Chip" Glaze, Jr., the new director of the Lawyers and Judges Assistance Program (LJAP) of The Mississippi Bar, obtained his BS degree in Psychology in 1992, his Master's degree in Marriage and Family Therapy in 1994, both from Mississippi College. He obtained his JD from Mississippi College School of Law in 2002. Chip is dually licensed as an attorney and a Marriage and Family Therapist. His wife, Laura, is an attorney with Wells Moore Simmons Edwards & Wilbanks, PLLC, and is the 2011 – 2012 President of the Capital Area Bar Association. They live in Jackson with their sons, Daniel (17), Mason (12), and Gray (7). The Glazes are members of St. James Episcopal Church and have an active life there and in the calendar of extracurricular activities with their sons.

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PHELPS DUNBAR LLP

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EUGENIA "GENIE" STARK THOMAS

who has recently joined the firm
in our Jackson office.

Ms. Thomas is counsel practicing in the area of health care law with a focus on general compliance advice, RAC and audit advising, Medicare reimbursement and coverage advice, RAC and other Medicare audit appeals, health care operational contracting, IT contracting, medical office leasing and HIPAA. Her background in corporate law and experience with tax-exempt organizations allow her to assist health care clients in navigating both the regulatory and business components of health care transactions.

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*By Pieter Teeuwissen,
City Attorney, Jackson,
Mississippi and Ryan Hall,
Deputy City Attorney,
Jackson, Mississippi*

The First Amendment & Governmental Entities

The First Amendment & Governmental Municipalities

The First Amendment to the United States Constitution provides for the freedom of religion, press, and expression. It states that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

In recent years, issues regarding the First Amendment have been presented to the American courts. This discussion focuses on the issues of (1) the First Amendment’s protection of protests, (2) the First Amendment rights of government employees, (3) and the First Amendment’s protection of adult entertainment facilities.

Section One First Amendment Protection of Protests

a. The First Amendment’s Protection of Protests

Until the Twentieth Century, the United States Supreme Court never ruled on the constitutionality of any federal law regarding the Free Speech Clause of the First Amendment. The topic of the First Amendment, as it deals with protests, is broad. Our discussion of these issues focuses on the subject of abortion protests. This type of protest is routinely encountered by local governments, involve strong emotions, and provide a framework to analyze other protests. As a result, local governments often attempt to regulate the time, place and manner of protests. Many factors determine whether an ordinance is in violation of the First Amendment. Time, place, and/or manner restrictions must: (1) be content-neutral; (2) be narrowly-tailored; (3) serve a significant governmental interest; and (4) leave open ample alternative channels for communication.

The first factor is whether the ordinance is content-neutral. If the government’s interest is related to the suppression

of the content, the ordinance is not content-neutral, and the regulation is subject to strict scrutiny. *Texas v. Johnson*, 491 U.S. 397, 109 S. Ct. 2533, 105 L. Ed. 2d 342 (1989). To survive the strict scrutiny standard, the regulation must: (1) be justified by a compelling governmental interest; (2) be narrowly tailored to achieve the interest; and (3) be the least restrictive means for achieving that interest. See *Johnson v. California*, 543 U.S. 499, 125 S. Ct. 1141, 160 L. Ed. 2d 949 (2005). If the ordinance can be justified without reference to the content of regulated speech, the ordinance is content-neutral, and intermediate scrutiny applies. *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 104 S. Ct. 3065, 3069, 82 L. Ed. 2d 221 (1984); *U.S. v. O’Brien*, 391 U.S. 367, 88 S. Ct. 1673, 20 L. Ed. 2d 672 (1968). Courts will apply the *O’Brien* standard when discussing whether an ordinance or regulation survives the intermediate standard. *O’Brien* states that the regulation will be upheld as constitutional if: (1) it is within the constitutional power of the government; (2) it furthers an important or substantial governmental interest; (3) that governmental interest is unrelated to the suppression of free expression; and (4) the restriction is no greater than necessary to the furtherance of that interest. See *O’Brien*, 391 U.S. 367.

No matter one’s political or religious affiliation, nor the passage of 40 years since *Roe v. Wade*, abortion continues to be an emotionally-charged topic in today’s society. As a result, the issue of abortion protesters and their constitutional rights is

Continued on next page

2011-2012 President-Elect Nominees

Ballots will be sent in January, 2012



Guy W. Mitchell, III
Tupelo

Review Activity, both located in Washington, D.C. Following active duty he, his wife Susan, and their two children settled in Tupelo where he entered the private practice of law with Mitchell, McNutt & Bush, a firm his grandfather had begun in 1904. Mitchell has been engaged primarily in insurance defense litigation, public entity liability, real estate, banking and probate. In addition, he has served as general counsel for the city of Tupelo for 35 years.

Professionally, he is a shareholder of Mitchell, McNutt & Sams, P.A. In The Mississippi Bar, he has held a number of positions, including chairman of the Civil Justice Reform Act Advisory Committee for the Northern District of Mississippi and the Judicial Liaison Committee, director of the Young Lawyers Section, and chair of the Summer School for Lawyers. He has served on the Special Task Force to Strengthen Confidence in the Legal System and the Mississippi Supreme Court Advisory Committee on Rules, and is a Fellow of the Mississippi Bar Foundation. He is a past president of the Law Alumni Chapter of the University of Mississippi School of Law and is a member of the Lamar Order.

Mitchell is a past president of the Lee County Bar Association and the Mississippi Defense Lawyers Association. He is a member of the American Bar Association, the American Judicature Society, the International Association of Defense Counsel, and the American College of Mortgage Attorneys.

Outside of his practice, Mitchell has been deeply involved in community and economic development, healthcare and charitable endeavors. He serves on the board of BancorpSouth and on the boards of directors of North Mississippi Health Services, Community Development Foundation, and the CREATE Foundation. He has been chairman of the United Way of Greater Lee County, and chairman of the board of directors of Mississippi Methodist Senior Services. He is also a charter member of the board of the Autism Center of Tupelo and has previously served on the board of directors of the Tupelo Symphony and of the Tupelo Community Concert Association. He has served as president of the Kiwanis Club and was a charter member of the Association for Excellence in Education and Leadership Lee County. He was named Tupelo's Outstanding Citizen by the Tupelo Junior Auxiliary in 1996.

In his church, First United Methodist, Mitchell has served as chairman of the Administrative Board, the Finance Committee, the Staff Parish Committee, and the Stewardship Committee.

Mitchell is married to the former Susan Frances Sudduth of Vicksburg, Mississippi. They are the parents of two daughters, Katherine Mitchell Tucker (Ricks) of Atlanta, Georgia, and Liza Mitchell Frugé (Don, Jr.) of Oxford, and are exceptionally fond of their seven grandchildren, Don Frugé, III, Rosemary Frugé, Charlie Frugé and Guy Frugé, and Francie Tucker, Eva Tucker and George Tucker.



D. Briggs Smith
Batesville

D. Briggs Smith was born and reared in Meridian, Mississippi. He is a 1962 graduate of the University of Mississippi School of Pharmacy, and he received his Juris Doctorate degree from the University of Mississippi School of Law in 1966.

Briggs served in the military as a medic/pharmacist with the 186th United States Air Force Combat Support Squadron at Key Field in Meridian, Mississippi. He was a pharmacist at the University of Mississippi Medical Center in Jackson, Mississippi, before returning to the University of Mississippi to pursue a degree in law.

Briggs began practicing law in Batesville, Mississippi, in 1967 with the Cliff Finch Law Firm. In 1974 he co-founded the Smith Phillips Law Firm in Batesville of which he presently is of counsel. During his 37 years of practice, he has been a member of the trial bar and has handled cases involving products liability, gaming, personal injury and other cases in his general office practice. He is admitted to practice in all state and federal courts in Mississippi as well as the Fifth Circuit Court of Appeals and the United States Supreme Court.

He has been involved in numerous activities with the Bar and is a Fellow of the Mississippi Bar Foundation. Briggs served as trustee of the Mississippi Bar Foundation (1997-2000). He has served on various Bar committees. Additionally, he has participated in the James O. Dukes Professionalism Program, served as a coach and as district and state judge for Mock Trial Competition, and most recently was appointed to The Mississippi Bar Task Force to address honesty and integrity of the Bar and fairness and impartiality within the judiciary. He is a member of the American Bar Association, the Mississippi Association for Justice, and the Panola County Bar Association, having served as president.

His law related memberships include being a member of the Ole Miss Law Alumni Association of which he served as president. He was selected as Ole Miss Law Alumnus of the year (2003-2004). He is a member and past president of the University of Mississippi Lamar Order.

Briggs has memberships in the Litigation Counsel of America and American College of Barristers. Since 1995 he has been certified by the National Board of Trial Advocacy in the area of Civil Trial Advocacy. He has written articles and spoken on subjects including appellate practice and gaming law. Briggs is also a certified mediator.

Active in civic and community endeavors, Briggs has served as president and secretary of the Batesville Rotary Club. He was selected as a Rotary Paul Harris Fellow. He has held the positions of Elder and Deacon in the Batesville Presbyterian Church and twice served as chairman of the Pulpit Nominating Committee. He is currently serving as a Trustee for the St. Andrew Presbytery. Having attained the rank of Eagle Scout, Briggs has been very active in the scouting program in North Mississippi. He has participated in numerous and various school and city charitable organizations both as a member and an officer.

Briggs is married to the former Dot Fancher of Senatobia, Mississippi, and they have three sons: Dan of Ocean Springs, who is married to the former Michelle Miller of Pascagoula, a practicing attorney in Biloxi with Page, Mannino, Peresich and McDermott; Carter, who is married to the former Cassie Anderson of Jackson; and Fancher Smith of Memphis, Tennessee. Dot and Briggs have five grandchildren.

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